

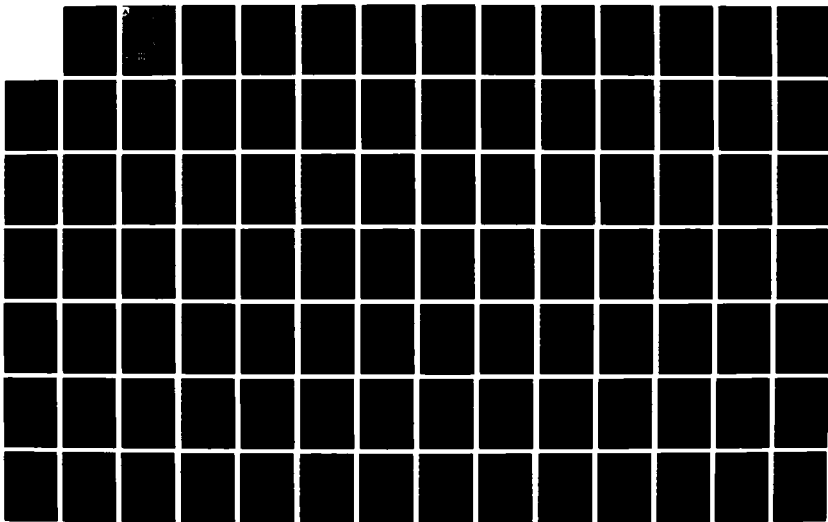
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## RESEARCH REPORT

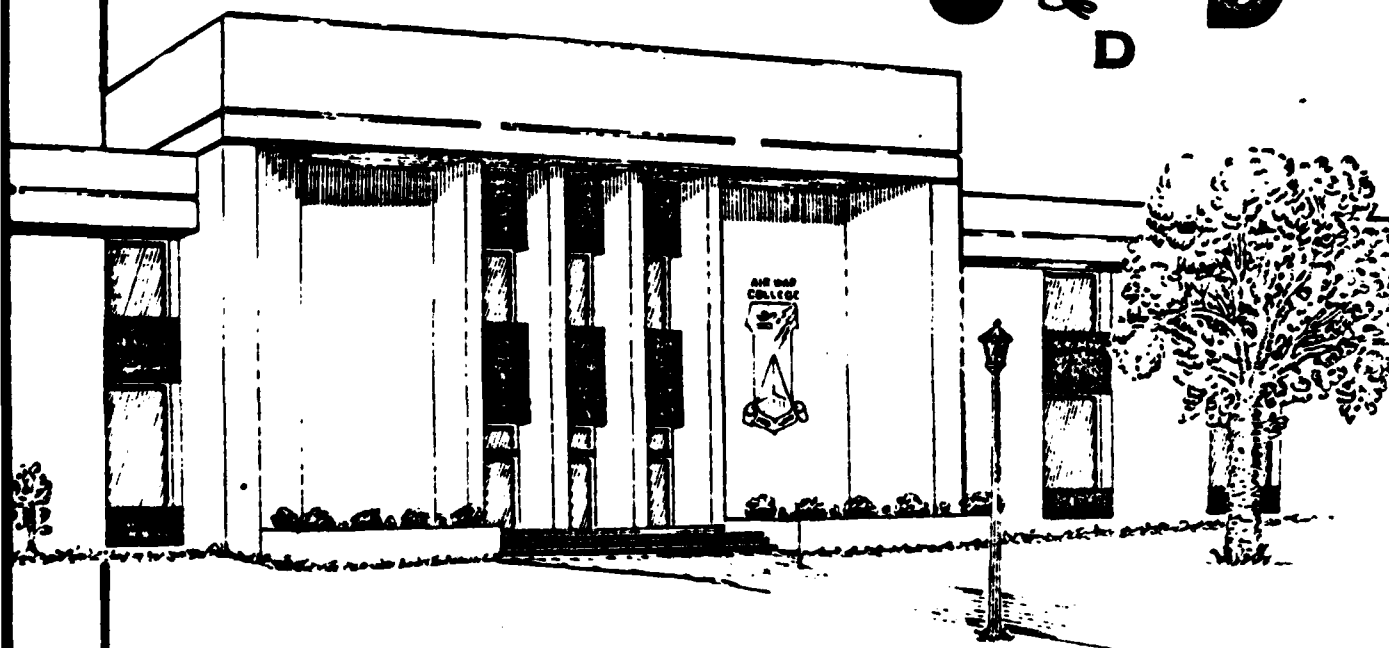
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By COLONEL JOHN R. BRANCATO

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IN SEARCH OF COMMAND AND STAFF DOCTRINE



by

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A RESEARCH REPORT SUBMITTED TO THE FACULTY

IN

FULFILLMENT OF THE RESEARCH

REQUIREMENT

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MAXWELL AIR FORCE BASE, ALABAMA

May, 1987



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AIR WAR COLLEGE RESEARCH REPORT ABSTRACT

TITLE: In Search of Command and Staff Doctrine

AUTHOR: John R. Brancato, Colonel, USAF

Responsibility in the United States Air Force for the general rules on command and staff, as concepts, has recently passed from the personnel community to the judge advocate community. This was the result of the 1987 transfer of the office of primary responsibility over Air Force Regulation 35-54, "Rank, Precedence, and Command," from the Air Force Military Personnel Center to the Office of The Judge Advocate General.

The author, a military lawyer with a long-standing interest in military history, has attempted to aid that movement by pulling together all the written rules, unwritten principles, and historical practices that make up the conceptual infrastructure of command and staff in the United States Air Force.)

This is not an article about leadership or management. Rather, it is a statement of—or a search for—basic doctrine.

There are many problems here. One example is the confusion in a high appellate court over command succession rules, which resulted in the court's declaring that six Air Force base commanders were not really commanders. Another is the recent movement to enhance staff officers' promotion potential by converting staffs into squadrons and staff officers into commanders. Still another is the general lack of knowledge of Air Force people over the differences between commanding organizations and commanding things other than organizations. Arguably, problems such as these stem from the fact that the United States Air Force is still young and still growing in matters of doctrine.

This article surveys both military law and military history to analyze those problems, to place them in legal and historical perspective, and to provide a systematic framework for solving them. It brings together in one document—perhaps the first of its kind—some of the basic truths about command and staff structure that the Air Force believes or ought to believe.

These include, among others, principles on qualifying for command, taking command, sharing command, relinquishing command, functioning as staff, setting up commanders, commanding organizations, commanding segments of organizations, and commanding nonorganizational activities.

This is an article for judge advocates, commanders, and staff officers.

## BIOGRAPHICAL SKETCH

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I can no longer obey; I have tasted command,  
and I cannot give it up.

—Napoleon Bonaparte<sup>1</sup>

Although some people tend to forget it, and a few never learned it even while most know it, the United States Air Force exists for just one reason. The reason is war.<sup>2</sup>

War, in turn, is fought according to military doctrine. However, when warriors go into combat, they have little time to develop new military doctrine. New doctrine is developed between wars, based on, among other things, what happened in the last war and what happened after it.<sup>3</sup> During war, it is old doctrine that mostly guides the action.<sup>4</sup>

Military doctrine,<sup>5</sup> of course, is what is officially understood to be the best way to do military things.<sup>6</sup> It can be at once authoritative and opinionative. To be effective as a guiding force, it has to be both widely taught and widely believed.<sup>7</sup> It can deal with such divergent challenges as how to best employ a particular weapon system, and how to organize a particular group of warriors for optimum usefulness.<sup>8</sup>

Organizational doctrine has undergone an upheaval in the U. S. Air Force in the decade following the war in Vietnam. At peace, the young Air Force has found time to renew its evolution away from U. S. Army doctrine. The changes have been profound in the case of doctrine on command and staff structure.<sup>9</sup> For example:

—Since 1985 alone, the United States Air Force Court of Military Review has invalidated the actions of at least six Air Force base commanders in the realm of courts-martial, declaring that the incumbents did not succeed to command properly, and therefore were not commanders at all! Yet, in every case these "commanders" were accepted, treated, and regarded as commanders by officials throughout the Air Force, including their own Air Force judge advocates. Clearly, this situation means one of only two possible things: Either the Court is very wrong, or the underlying doctrine very bad.

—Since 1979, the Air Force has converted two functional staff agencies into operating squadron organizations Air Force-wide, and at the time of this writing is testing a third across-the-board conversion which features making a squadron out of an aggregation of four or five traditional staff agencies. (Several other individual organizations were recently permitted to change the name of supervision structures to squadrons, or the name of supervisors to commanders, without changing missions.) In the case of the conversions, staff heads acquired substantial new power under the Uniform Code of Military Justice<sup>10</sup> and other sources flowing from their new positions as commanders, yet they acquired no new missions. Indeed, in each case they retained the same staff missions that they had before the conversions.

—Aside from the basic question of whether the doctrine that allowed those conversions and name changes to happen is good doctrine or bad doctrine, there is a suggestion, if not evidence, that more than one of these departures from historical precedent were motivated out of a desire of the affected officers—or their leaders and "lobbyists"—to



enhance the promotion potential of staff officers and supervisors who do not command. Considering the stature of commanders in the Air Force, this objective could be furthered by giving staff officers a title that they otherwise would never have, namely, "commander!" If this suggestion is valid, then those new commands were formed either improperly and for the wrong reasons, or properly but for the wrong motivation. In either case, the underlying doctrine is doubly suspect.

--In recent years, the Air Force has experienced a proliferation of titles which include the word, "commander" or which involve command-like functions. Yet, in many of these cases, the incumbents do not command organizations. There are squadron section commanders, detachment commanders, "alpha" flight commanders, aircraft commanders, crew commanders, shift commanders, air troop commanders, training commanders, shelter commanders, and prisoner of war commanders, among others. What or whom do these "nonorganizational" commanders command, and what authority do they have, most particularly under the Uniform Code, that may be similar to the authority of organizational commanders? These are doctrinal questions that are not widely understood within the Air Force.

Issues such as these are of enormous concern to Air Force judge advocates, who give advice to commanders and staff officers about their authority and power. The issues also should be of special interest to the recipients of that advice--at all levels--who desire to exercise power within the limits of their authority. Of greatest concern, however, the correct resolution of these and related issues may ultimately affect the organizational "health" of the Air Force at the time of the

next war.<sup>11</sup>

This article examines each of these issues and proposes derivative doctrinal points that can survive the resolution of the issues.<sup>12</sup> It also develops a definitional and correlative framework for systematic thinking about command and staff structure in the Air Force. It is not an article about "commandership,"<sup>13</sup> leadership, management, or supervision, or about the differences among those concepts.<sup>14</sup>

# I. DEFINITIONS AND DISTINCTIONS

It should be helpful at the outset to consider the essences of command and staff and some related concepts. This will provide a framework for a systematic analysis of current issues, as well as of issues that, to paraphrase Shakespeare, have not yet been dreamt of.<sup>15</sup>

## A. Command<sup>16</sup>

The word command comes from the Latin commendare ("to commit to one's charge" or "to entrust utterly to"), which in turn was influenced by manus and dare, which formed the Latin mandare ("to place in one's hands").<sup>17</sup>

According to the Department of Defense Dictionary of Military and Associated Terms,<sup>18</sup> command is:

The authority that a commander in the military Service lawfully exercises over subordinates by virtue of rank or assignment. Command includes the authority and responsibility for effectively using available resources and for planning the employment of, organizing, directing, coordinating, and controlling military forces for the accomplishment of assigned missions. It also includes responsibility for health, welfare, morale, and discipline of assigned personnel.<sup>19</sup>

This definition appears to capture the essence of command as it is known in today's United States Armed Forces. It is a "compound" concept composed of two fundamental elements, namely, (a) legal authority over people, and (b) legal responsibility for the mission and

for resources.<sup>20</sup>

Aside from the unique subject matter of the military mission, that is, war, command is probably the principal distinguishing feature between military organizations and civilian organizations. The orders of the leaders of civilian organizations are not backed up with the specter of a criminal penalty under the Uniform Code if they are disobeyed.<sup>21</sup> Similarly, there are no criminal penalties waiting for subordinates who are disrespectful to their leaders in civilian organizations.<sup>22</sup> Also, it is the commander himself who is the central actor in imposing discipline on his subordinates.<sup>23</sup> Few would argue that his duties in this area are anything less than awesome.<sup>24</sup> Thus, at first blush, it is the legal authority of commanders over their subordinates, not their responsibility for the mission—unique mission or not—that sets commanders apart.<sup>25</sup>

But, it is not only the authority element that is different. There is something about the responsibility element that is different too. While the commander may assign duties and delegate the first element of his command—authority—to subordinates, he may never delegate the second—responsibility. A civilian boss who owns the business may delegate responsibility, if he wishes. In this case, he simply forgets about, and stops worrying over, whatever it is that he tasked a subordinate to do.<sup>26</sup> If he does not own the business, he may still delegate responsibility if his own boss allows him.

This state of affairs is an offshoot of the principle that the commander is given the kind of legal authority he is given precisely because that is the only way he can accomplish the kind of mission unique to a military organization.<sup>27</sup> That unique mission involves

leading people into battle, and looking after their welfare so they are able to go into battle when needed. This includes people who would rather not go into battle, as well as the warriors who regard battle as a valuable privilege. (Phrased differently, the only way the commander can accomplish that kind of mission efficiently is with that kind of authority.)

If the commander wishes, he may share the authority, but never the command. If he were permitted to share the command, that is, the legal authority and the responsibility for the mission, presumably he would not need the legal authority in the first place. Then, it could all be done with leadership. The "abdicating" commander would just keep delegating until he finds a subordinate leader who has the wherewithal in himself to convince the reluctant soldiers to follow the example of the eager soldiers, even when nothing bad will happen to them if they do not. But, abdicator may never find that leader, and there may not be enough time in any event.

This difference—the inability to delegate responsibility—is probably the primary reason for the tendency to think of the commander as the actual embodiment of the military organization. Indeed, there is only one commander in a military organization, and he is the organization to people who follow military history only as it appears in newspapers and on television.<sup>28</sup> It is the commander who is victorious or who is defeated, not the soldiers, sailors, marines, or airmen. Thus, Napoleon could say, "it was not the legions which crossed the Rubicon, but Caesar,"<sup>29</sup> and everyone in France understood.

The commander is the "first citizen" of the organization, that is, the senior member. This is because he is normally the highest

ranking person there, or, if not, because he is close to being the highest ranking person and, in fact, has been selected to exercise command over everyone else.<sup>30</sup>

In the U. S. Air Force, command is exercised organizationally, that is, over a formal organization, its mission, and its people; and nonorganizationally, that is, over an activity or function and the people then participating in the activity or performing the function.<sup>31</sup> Organizational command usually is permanent or indefinite command, while nonorganizational command tends to be of shorter and definite duration, although it need not necessarily be.<sup>32</sup>

Whether organizational or nonorganizational, some types of command can be exercised by certain categories of Air Force members only.<sup>33</sup> In other words, specific qualifications are required of the commanders of some organizations, activities, or functions. Indeed, at least one category of Air Force members may never exercise command,<sup>34</sup> and another may do so only rarely.<sup>35</sup>

Command in the Air Force is exercised by commanders, not commanding officers or commanding generals.<sup>36</sup> If the commanded organization is a school or other student organization, command is by a commandant.<sup>37</sup> However, one school—the United States Air Force Academy—is commanded by a superintendent.<sup>38</sup> Air Force officers who command unified or specified commands may use the lofty title, commander in chief.<sup>39</sup>

## B. Staff

The word staff can be traced at least to the German word stab ("to support" or a "stick for support").<sup>40</sup>

According to the DOD Dictionary, there are basically two kinds of staffs, the general staff and the special staff.<sup>41</sup>

A general staff is:

A group of officers in the headquarters of Army or Marine divisions, Marine brigades and aircraft wings, or similar or larger units that assist their commanders in planning, coordinating, and supervising operations. A general staff may consist of four or more principal functional sections: personnel (G-1), military intelligence (G-2), operations and training (G-3), logistics (G-4), and (in Army organizations) civil affairs/military government (G-5). (A particular section may be added or eliminated by the commander, dependent upon the need that has been demonstrated.) The comparable Air Force staff is found in the wing and larger units, with sections designated Personnel, Operations, etc.<sup>42</sup>

A special staff is:

All staff officers having duties at a headquarters and not included in the general (coordinating) staff group or in the personal staff group. The special staff includes certain technical specialists, e.g., quartermaster officer, antiaircraft officer, transportation officer, etc.<sup>43</sup>

A staff, then, is a group of people—all officers according to the DOD Dictionary<sup>44</sup>—who assist the commander in fulfilling his responsibilities.<sup>45</sup> In doing so, staff officers have responsibilities of their own, in their separate areas of interest. These responsibilities are not coterminous with those of the commander, however,

even when staff responsibilities are aggregated and considered as a whole.<sup>46</sup>

Subject to the staff doctrine of his military department,<sup>47</sup> the commander uses staff officers as he sees fit. In the eighteenth century, Napoleon needed a staff, but not for much more than to pass on his orders and to perform other administrative errands.<sup>48</sup> He was the consummate decision maker unto himself. In the nineteenth century, General Sherman did not like staff officers at all, although he used a few of them from time to time.<sup>49</sup> In the twentieth century, General MacArthur relied heavily on staff officers to assist him in planning and executing his campaigns. MacArthur's staff helped him make decisions.<sup>50</sup>

Today, no commander of a large military organization can function efficiently without a compartmented staff structure that will aid him in dealing with the technological and societal influences of the time.<sup>51</sup> Indeed, these staffs have grown to enormous proportions—almost exponentially—in the last 100 years.<sup>52</sup>

In the U. S. Air Force, there is a large staff at the departmental level known as the Air Staff.<sup>53</sup> It is organized very much along the lines of a general staff and a special staff, but it serves no commander other than the President,<sup>54</sup> and then only through the President's civilian agents—the Secretary of Defense<sup>55</sup> and the Secretary of the Air Force.<sup>56</sup> It is headed by the top staff officer in the Air Force, the Chief of Staff.<sup>57</sup> The Chief of Staff is not a commander.<sup>58</sup> The Air Staff, therefore, does not function at all like a great general staff, in the sense of the German Great General Staff.<sup>59</sup>



There are variations of Air Staff organization at major command level, but an important difference is that there are commanders to serve there. This is the case for staffs at intermediate levels below major command, as well.

At wing level, the primary working and fighting organization, outsiders looking in (and perhaps even some insiders who have not thought through the issues) see the same variations, but the Air Force itself does not view it that way. According to Air Force Regulation 26-2, Organization Policy and Guidance:

A wing is organized as an operational unit, with no administrative staff authorized to the commander. (The subordinate and deputy commanders are the commander's staff.) Organization within the wing is functional, with no distinction between line and staff responsibilities.<sup>60</sup>

Within this functional structure, activities under the wing commander are categorized as "command elements,"<sup>61</sup> "staff elements,"<sup>62</sup> and "operating elements."<sup>63</sup> However, these distinctions are apparently relevant only on manning documents. They have no common usage throughout the Air Force. It may be more useful to note that, with the exception of the activities headed by subordinates who are operational commanders,<sup>64</sup> all of the activities under the wing commander are headed by traditional staff officers. Some of these officers also have "staff command,"<sup>65</sup> or, as the term is used, are "dual-hatted."

### C. Line

The concepts of line and line officers are important as an aid in refining and isolating further the meanings of command and staff.

Line takes its origins from the line of battle, or the place where opposing forces meet.<sup>66</sup> It is distinctly a military term! Traditionally, the officers at the line of battle who led the fighting soldiers were called line officers. Line, therefore, connotes fighting and combat—something akin to what is commonly referred to as operations in the U. S. Air Force. The first question, then, is who are the line officers in the Air Force, and who are "nonline" officers?

Closely related to the distinction between line and nonline is the distinction between line and support. The latter term implies something other than combat. The second question, then, is whether support officers and nonline officers are one and the same thing.

Also, standing alone, the distinction between command and staff suggests verbs like decide and direct for command, and advise and support for staff. However, what is suggested when comparing command and line on the one hand, and staff and line on the other? The third question, then, is whether all commanders are line officers in the Air Force. The fourth is whether any staff officer in the Air Force is also a line officer.

Fifth and finally, a question arises from the Air Force's use of line as a promotion competitive category for commissioned officers—whether this has vitiated all other meanings of line, and therefore has diminished its usefulness as an aid in defining command and staff?

Line Officers vs. Nonline Officers. The DOD Dictionary<sup>67</sup> does not define line or line officers. Also, there is nothing in current Air Force directives that does so either. However, it is interesting to note that the unofficial Air Force Dictionary<sup>68</sup> of 1956, after

defining a line officer as one who is "engaged in operational duties, esp. combat duties," notes, in effect, that this term is applicable only in the Army and Navy.<sup>69</sup>

Yet, the term is widely used in the Air Force and cannot be cast aside lightly. Assuming that a line officer, in the historical sense, is one who goes into combat, the threshold task is to identify the kind of things that Air Force officers do in war that amount to combat.

Is Air Force combat the exclusive province of aircrews who unleash bombs on targets or who shoot at other airplanes? Does it also include aircrews who airlift supplies into a combat zone? What about officers who supervise the maintenance of aircraft in a combat zone? Does it include missile crews who might launch devastating munitions from underground stations without ever seeing their targets? What about other officers whose duties in a variety of fields can subject them to being shot at by the enemy?

Perhaps the best way of looking at line officers relative to Air Force combat is to look at the Air Force policy concerning using women in combat.

That policy starts with a statute which provides that "[f]emale members of the Air Force . . . may not be assigned to duty in aircraft engaged in combat missions."<sup>70</sup> For purposes of this provision, the Air Force has defined "aircraft engaged in combat missions" to include aircraft (a) that deliver "munitions or other destructive material against an enemy," or (b) that are engaged in "[a]erial activity over hostile territory where enemy fire is expected and where risk of capture is substantial."<sup>71</sup>

Moreover, the Air Force has gone further than the statute. On policy grounds alone, the so-called "combat exclusion for women" has been expanded to include duties or service in units where there is a "high probability of exposure to hostile fire and substantial risk of capture."<sup>72</sup> Doubtless, this can encompass both aerial and ground activities.

To implement the combat exclusion, the Air Force has published a list of aircraft,<sup>73</sup> a list of duty specialties,<sup>74</sup> and a list of unit types and unit elements<sup>75</sup> that further delimit the above exclusions. There are 34 aircraft on the list (most notably not including tanker aircraft, 4 duty specialties (most notably not including missile launch officers), and 4 unit types (most notably including "Red Horse" squadrons--the combat engineers).<sup>76</sup>

Drawing an analogy with the law and policy on women in combat, it can be concluded that Air Force officers who fly those aircraft, who serve in those duty specialties, and who belong to those kinds of units, are line officers. The corollary is that all other Air Force officers are "nonline" officers. Using this method, for example, a judge advocate would not be a line officer.

Another--and broader--way to look at the same equation is to draw the analogy with the law of armed conflict rather than with the law and policy on women in combat. Under the Geneva Conventions of 1949,<sup>77</sup> "medical personnel"<sup>78</sup> and chaplains<sup>79</sup> are regarded as noncombatants.<sup>80</sup> These two categories of military personnel are accorded special protection and special treatment if detained by an enemy who is a signatory party. Among other things, such detainees cannot be considered as prisoners of war. All other military personnel

are combatants.

In this context, all officers are line officers except "medical personnel" and chaplains. Using this method, a judge advocate would be a line officer!

Line Officers vs. Support Officers. If a line officer is one who does the actual fighting in combat, who are the support officers? Are the commanders of the fighting officers support officers if they never fly into actual combat themselves? What about the staff of those commanders--the officers who plan the daily flying missions? How about the pilots of tanker aircraft and other "noncombatant" platforms? Are maintenance officers support officers? Missile launch officers?

It is quickly apparent that support officers are not necessarily identical to "nonline" officers, using either of the two methods suggested for that definition--the combat exclusion for women analogy, or the Geneva Conventions analogy. For one thing, no one would seriously argue that a wing commander of a forward-deployed F-16 wing is a support officer, even if he does not fly after the shooting starts. If he does fly, however, and is refueled in an air superiority zone by a KC-10 piloted by a female, no one would soberly look on the female as a support officer either. On the other hand, if the wing commander's judge advocate is captured while writing wills at a "bare base," is he any the less a support officer?

Clearly, the line officer-support officer distinction is not very meaningful and appears to serve no useful purpose. It ought to be accordingly abandoned by all who desire to communicate with any measure of precision. A more helpful distinction might be made among

operations officers, maintenance officers, and support officers,<sup>81</sup> for everybody knows what they are, for the most part.

Line Officers vs. Commanders. Are all commanders line officers, that is, does one have to be a line officer to be a commander?

The answer is resoundingly no. Medical officers can command medical units,<sup>82</sup> yet they are not line officers under any definition. Staff officers—some of whom may be line officers in the line-nonline sense and some of whom may be nonline officers—can also have commands of their own.<sup>83</sup>

This, too, is not a meaningful distinction.

Line Officers vs. Staff Officers. If staff means advise and support, and command means decide and direct, where does line fit in? Line-staff seems to connote a distinction between "operator" and "nonoperator," or perhaps between officers with an aeronautical rating who "fly the line," and officers without such a rating who do not.

Is this helpful? It appears not, because not all officers without aeronautical ratings are staff officers. For example, some are commanders!<sup>84</sup> And, some of those commanders command fighting units such as "Red Horse" squadrons. Also, not all "nonoperators" are staff officers. Some are maintenance officers.<sup>85</sup>

Line Officers as a Promotion Competitive Category vs. All Other Categories. In the Defense Officer Personnel Management Act,<sup>86</sup> Congress officially recognized what the military departments had been doing for years—promoting officers by broad professional categories rather than as a whole:

Under regulations prescribed by the Secretary of Defense, the Secretary of each military department shall establish competitive categories for promotion. Each officer whose name appears on an active-duty list shall be carried in a competitive category of officers. Officers in the same competitive category shall compete among themselves for promotion.<sup>87</sup>

Under the competitive category concept, officers in a competitive category have their own quota for promotion, and they compete against no one but themselves to fill the quota.

The Secretary of Defense's regulations state essentially that a competitive category shall be formed only for "groups of officers whose specialized education, training, or experience, or often relatively narrow utilization, make separate career management desirable."<sup>88</sup>

The Secretary of the Air Force, in implementing the statute and the Department of Defense guidance, has established eight promotion competitive categories. These are JA (Judge Advocates), CH (Chaplains), MC (Medical Corps), DC (Dental Corps), MSC (Medical Service Corps), BSC (Biomedical Sciences Corps), NC (Nurse Corps), and LAF (Line of the Air Force).<sup>89</sup>

In other words, under these correlatives, all officers who are not judge advocates, chaplains, or health care providers are line officers. Therefore, line officers can include women who cannot fly into combat, men who never see combat, operations officers, maintenance officers, staff officers, and commanders. But, not judge advocates, even when they are in command.<sup>90</sup>

In today's Air Force, the most prevalent usage of "line" tends to be in the context of the "Line of the Air Force" competitive

category. There is nothing inherently wrong with this, but it does mean that "line" has little meaning outside of that context. In turn, this leads to the conclusion that "line," while historically interesting, is only minimally helpful in defining command and staff.

#### D. Other Correlatives

There are two other sets of correlatives that bear heavily on command and staff doctrine.

Grade and Rank. These are not different names for the same thing. The distinction here is important in determining whether an officer is senior enough to be an organizational commander, considering the grade and rank of other officers assigned to the organization who are eligible to command and present for duty.<sup>91</sup> This distinction is statutory: "'Grade' means a step or degree, in a graduated scale of . . . rank, that is established and designated as a grade by law or regulation."<sup>92</sup> "'Rank' means the order of precedence among members of the armed forces."<sup>93</sup>

Grades, then, are things like lieutenant, major, and colonel—steps that many people mistakenly call ranks. For commissioned officers in the United States Armed Forces, they are established by statute.<sup>94</sup> For enlisted members in the Air Force, they are established by departmental regulation.<sup>95</sup>

Rank, on the other hand, is the order of precedence among the grades and within the grades. Grade confers rank on a military member. Everyone knows that a major is higher up in the rank scale than a captain. In fact, the order of precedence among the grades is



established by the same statute<sup>96</sup> or regulation<sup>97</sup> that establishes the the grades themselves.

Within a grade, rank is determined by comparing dates of rank. That is, a member whose date of rank is earlier than the date of rank of another member of the same grade is senior in rank.<sup>98</sup> Members having the same grade, and same date of rank in that grade, rank among themselves according to rules prescribed by the Secretary of Defense<sup>99</sup> and implemented by the service secretary concerned.<sup>100</sup>

Pay grades such as O-3, O-6, E-7, and E-9 are mere numbers used in Title 37 of the United States Code for pay, allowance, and other related purposes.

Establishments and Units. The distinction between these is relevant to determining where an officer is assigned, so that all officers assigned there can be identified and ranked. This is necessary in deciding who is senior there, and therefore in deciding who may assume command there.<sup>101</sup> These terms are also important in determining what an organization is, so that nonorganizational command<sup>102</sup> can be understood.

There are just two kinds of organizations in the Air Force: establishments and units.<sup>103</sup> Both are legal entities on which appropriated funds are spent. If a group of people or a structure of functions is not an establishment or a unit, it simply is not an organization. If, then, it is anything at all, it is a nonorganization.

An establishment is a structure to which people belong, but to which no people are assigned in the manning sense.<sup>104</sup> Establishments

exist only at group (as in groups and wings) level and above.<sup>105</sup> They consist of units and other establishments.<sup>106</sup> An establishment must have at least one unit assigned to it—a headquarters unit<sup>107</sup>—but need not have other establishments under it. It may or may not also consist of units other than a headquarters unit.

Every establishment in the Air Force but one is assigned to another establishment.<sup>108</sup> That one exception is the establishment, United States Air Force, itself.

While having no people assigned to it, each establishment has a commander—the commander of the headquarters unit—who commands not only the headquarters unit but also the subordinate commanders of all direct reporting units and other establishments that belong to it.

Not all organizations at group or equivalent level or higher are establishments. If the organization does not have a headquarters authorized for it, it is a unit, not an establishment.

A unit is a group of people—more than a structure of functions—which ordinarily has both a commander<sup>109</sup> and a manning authorization.<sup>110</sup> People are assigned to the unit in the manning sense. There are three kinds of units in the Air Force: headquarters units, squadrons (or numbered flights), and miscellaneous units (units in the nature of a squadron that are named, rather than numbered).<sup>111</sup>

No unit has a superior or subordinate unit, and no unit has a subordinate establishment. However, each unit has a superior (or parent) establishment. Also, no unit is authorized a headquarters,<sup>112</sup> except that a headquarters unit is a headquarters. If an organization does not have a headquarters, it has to be a squadron (or numbered flight) or a miscellaneous unit. Every unit is assigned to an

establishment.<sup>113</sup>

Common establishments in the Air Force are groups, wings, divisions, numbered air forces, major commands, separate operating agencies, and equivalent organizations. Take the major command, Strategic Air Command (SAC), for example. SAC is an establishment. There are no people listed on any manning document entitled "SAC." There are people assigned to Headquarters, SAC (a headquarters unit)<sup>114</sup> and there are people assigned to SAC's direct reporting squadrons. One of SAC's principal subdivisions are other establishments known as numbered air forces. The same structure exists at numbered air force level, all the way down to and including SAC's combat support groups.

Common units in the Air Force, in addition to headquarters units and squadrons (or numbered flights) are such miscellaneous units as clinics, hospitals, medical centers, schools, colleges, laboratories, and bands.<sup>115</sup>

Some structures appear to be units, but they are not. These are either unit segments or "pseudo" units. Unit segments include "alpha" flights,<sup>116</sup> squadron sections,<sup>117</sup> detachments,<sup>118</sup> operating locations,<sup>119</sup> and named activities.<sup>120</sup> Unit segments do not include named units,<sup>121</sup> which are miscellaneous units having a commander of their own. "Pseudo" units include Air Force Elements<sup>122</sup> and certain staff structures.<sup>123</sup>

## II. SOME DOCTRINAL POINTS

The definitions and correlations thus far presented readily suggest several basic doctrinal points about command. Additional points about command and staff, still basic but less apparent, will be developed later in the article and summarized at the end.

### A. An Organization—and a Military Member— Has Only One Organizational Commander<sup>124</sup>

Organizational commanders command organizations, whether the organizations are units or establishments. Units are made up of people, and establishments consist of units and other establishments. Organizations, therefore, consist of people who either are assigned directly or belong indirectly. Organizational commanders, therefore, command people.

However, commanders of superior organizations do not command the people in subordinate organizations. They command the commanders of the subordinate organizations. Thus, the commander of a major command, which is an establishment, commands the people in the headquarters unit, and the commanders of all direct reporting units and subordinate establishments.<sup>125</sup>

That there can be just one organizational commander of any given organization and the people in it—that organizational command cannot be shared—has been implicit, if not explicit, in United States military doctrine<sup>126</sup> since the beginning of the nation.<sup>127</sup> In fact, this principle was expressly recognized even in the pre-Constitutional

era,<sup>128</sup> and can be traced to Ancient Greece.<sup>129</sup>

It has its roots in notions of efficiency, single-mindedness, determination, clarity of purpose, and power of decision. These are the foundations of the doctrine of unity of command,<sup>130</sup> and of what really amounts to a custom that command is never shared.<sup>131</sup>

B. A Member Always Has an Immediate Commander,  
But Not Necessarily THAT Immediate 132

Most, but not all, formal military organizations are authorized a commander, whether the organization is a unit or an establishment.<sup>133</sup> If the commander is unable to exercise command, whether because of temporary absence, disability, or sudden death, there is an existing procedure called assumption of command<sup>134</sup> that, once employed, will replace that commander with another.

However, while this may happen quickly in most cases, it does not happen "automatically." In the first place, there may be no one assigned to, or present in, the organization who is eligible to assume command.<sup>135</sup> In the second, there is at most only one person who may assume command at any given time,<sup>136</sup> and he may choose—rightly or wrongly—not to.<sup>137</sup> In this regard, the word "assume" connotes an affirmative or volitional intent, if not act.<sup>138</sup>

Although the courts have been predisposed to find that intent or act under almost any circumstances—even constructively based on the eligible person's failure to deny command<sup>139</sup>—they would be hard pressed to do this if he positively announced that he was not assuming command.

The point is that a military organization may occasionally find itself temporarily without a commander. This does not mean that the members of such an organization are without an immediate commander during these periods. (This would be untenable for warriors.) Rather, it means only that their immediate commander is the commander of the next superior organization. The same applies to those few organizations that are headed by persons who are not eligible to command, and thus do not have commanders.<sup>140</sup>

The next superior commander will always be the commander of the parent establishment (that is, the commander of the headquarters unit of that establishment), inasmuch as members are assigned to units only, and no unit is superior to another unit.

Even in the unlikely event that all of the establishments in the chain of command are without a commander at the same time, a member will still have an immediate commander at all times as long as there is a commander in chief, that is, a President.<sup>141</sup>

#### C. The Senior Officer Has a Duty to Take Command<sup>142</sup>

This is another way of saying that the duty of command, not command itself, devolves on the senior officer. It is a corollary of the previous principle that someone must always be in command at least at some level in the chain of command.

The emphasis here is on the duty,<sup>143</sup> not on the need for seniority. The duty to take command (when the previous commander loses it, relinquishes it, is no longer senior enough to keep it, or is unable to exercise it) stems from the nature of military service

itself. It is service in an armed force, not an armed rabble. In the last analysis, it is only a commander who can ensure that the former condition prevails.<sup>144</sup>

D. Ordinarily, Only the Senior Officer  
May Command an Organization 145

The emphasis here is on seniority. This principle is steeped in military history and is founded on the concept of rank.<sup>146</sup> If one eligible member could command another eligible and present member who is senior in rank, the question may suitably be asked, why is there rank in the first place?

According to Colonel H. L. Scott in his famous Military Dictionary of 1864:

[M]ilitary rank means a range of military subordination. Higher rank therefore, created by law, cannot be made subordinate to lower rank except by positive law; or, in other words, a junior cannot command a senior, unless the law should otherwise decree.<sup>147</sup>

This civil war-era observation is as applicable in the United States Armed Forces today as it was during the War of Rebellion.<sup>148</sup>

Its validity is affirmed by only a modest reasoning process after considering the language of one current statute:

When the . . . Air Force . . . has on duty in the same organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.<sup>149</sup>

The corollary of this statute is that the President may not—or at least Congress has not authorized the President to—assign command to an officer in a grade lower than the highest grade held by any

officer on duty and eligible to command the organization.

The statute, which provides for taking command by what is now called an appointment<sup>150</sup> (as opposed to an assumption) is the exception of positive law envisioned by Colonel Scott. It is widely recognized as the only means by which a junior eligible officer may command a senior, eligible, present (available) officer in an organization. In short, this can be done only when both are equal in grade.

The general rule, thus derived, is simply that the commander must be the senior ranking eligible officer, unless another eligible officer, equal in grade but junior in rank, is appointed to command under the authority of the statute.

Note that the statute uses the term, "same organization." Because organizations include both establishments and units,<sup>151</sup> this means that the commander of an establishment (that is, the commander of the establishment's headquarter's unit) must be the senior ranking eligible officer belonging to the establishment (that is, assigned to any of the units in the establishment), just as the commander of a unit must be the senior ranking eligible officer assigned to the unit—absent an appointment without regard to seniority, of course.<sup>152</sup>

Thus, a lieutenant colonel who is assigned to a group headquarters unit may not command an eligible and present colonel who is assigned to a squadron unit belonging to the group. As long as the eligible colonel is present for duty, the lieutenant colonel may not therefore command the commander of that squadron unit, whether the latter is that colonel or another colonel. This is a different way of saying that, under those facts, the lieutenant colonel may not be the



commander of any member of that squadron unit--may not be a commander envisioned by the doctrine that "a member always has an immediate commander, but not necessarily THAT immediate."<sup>153</sup>

The same rule applies to a colonel at an air division when there is a brigadier general in a subordinate wing. The same holds for a major general at a major command when there is a lieutenant general in a subordinate numbered air force.<sup>154</sup>

More onerously, the same holds for a lieutenant colonel at a group who is junior to another lieutenant colonel in a subordinate squadron. This is not exactly the same situation, however, because the junior lieutenant colonel could take command by an appointment, as long as there is no eligible and present colonel in any of the group establishment's units.

There are exceptions required by simple logic. The first deals with the concept of eligibility to command. The second, with presence for duty.

If the senior ranking officer is not eligible to command the organization, he—and the organization itself--may be commanded by an officer junior to him, even junior in grade!<sup>155</sup> This presupposes, of course, that the latter is nonetheless the senior eligible officer.<sup>156</sup> Using the appointment statute once more in a modest reasoning process, this result is implicit in the language of that statute, and in any case is born out of the basic need to have someone command.

Similarly, if the senior ranking officer, although eligible, is not present for duty, the organization can be commanded by the next senior ranking and eligible officer<sup>157</sup> who is present for duty—even

one junior in grade to the absent officer.<sup>158</sup> In this connection, "presence" should equate roughly to "availability," for a present but disabled or incapacitated officer who cannot function, is equivalent to an absent officer in matters of command.

This is not to say that a commander must always be present for duty (or cannot be absent) in order to exercise command over—or, in order to remain in command of—the organization.<sup>159</sup> It means only that, to take (assume) command of the organization, the officer taking it must be present for duty when taking it.<sup>160</sup>

#### E. To Command, One Must Be Eligible<sup>161</sup>

No member of the U. S. Air Force is equal to another member. This follows logically from the concept of rank alone. As well, some members are "more equal" than others when it comes to command.

The requirement of eligibility—that one cannot be a commander unless he has certain qualifications or status over and above being a mere military member—probably stems from historical discrimination in favor of line officers and against staff officers, particularly in the U. S. Army.<sup>162</sup> However, the concept of "staff" has little meaning in today's Air Force at wing level and below,<sup>163</sup> and "line" has even less.<sup>164</sup>

Nonetheless, it is important to think of eligibility for command in the context of a law of nature. For every action, there is an equal and opposite reaction. If some members are eligible to command for whatever reason, others are ineligible for the same reason.

Happily for some, the trend in the Air Force follows the degeneration of line and staff. Former restrictions on command by women,<sup>165</sup> navigators,<sup>166</sup> members without aeronautical ratings,<sup>167</sup> and others have largely been abolished. A few remain, and some of those have been in continuous existence since the time of General Washington. In every case, the eligibility requirements apply equally to organizational command and nonorganizational command. They are:

Civilians. Civilian employees of the Air Force may not command. Command is uniquely a military phenomenon, to be exercised by military members alone, with the exception of the Commander of the United States Air Force, the President.<sup>168</sup>

Enlisted Members. Historically, senior enlisted members have not commanded junior enlisted members, but rather have led them or supervised them. Today, there is no express statutory ban on command by enlisted members. However, at least two statutes obliquely indicate that Congress does not favor the idea of enlisted command. One is the Uniform Code, which provides that "'commanding officer' includes only commissioned officers."<sup>169</sup> The other is the appointment statute,<sup>170</sup> which deals with command without regard to seniority in rank, and which by its terms applies only to seniority issues among commissioned officers.

In any case, a regulation has banned command by enlisted members entirely,<sup>171</sup> although the Air Force permits noncommissioned officers to head some units and activities, and to use command titles.<sup>172</sup> These members are not commanders, however, and have the legal status of a mere supervisor.<sup>173</sup> One notable exception applies in prisoner of war

camps under the Code of Conduct for Members of the Armed Forces of the United States.<sup>174</sup> There, the senior detainee who is not accorded noncombatant status, that is, who is a prisoner of war, will always be in command as far as the United States is concerned.<sup>175</sup> This applies even though the senior combatant is an enlisted member.<sup>176</sup>

Chaplains. Chaplains may never command.<sup>177</sup> This ban is statutory. It is based historically on the principle of church and state separation, and on notions of why there are uniformed chaplains in the first place—not because they might be needed to command, but because only they can perform certain religious functions for United States servicemen worldwide and in a combat environment. This prohibition is also essential if chaplains are to retain their noncombatant status under the Geneva Conventions of 1947.<sup>178</sup>

Retired Members. By statute, retired officers are eligible to command only when they have been recalled to active duty.<sup>179</sup>

Medical Officers and Other Health Care Providers. The applicable regulation provides the "medical and dental officers, nurses, medical service corps and biomedical sciences corps officers may command only those units and installations whose primary mission involves health care or the health professions."<sup>180</sup>

This is based on a confusing, but probably less restrictive statute.<sup>181</sup> There is no prohibition in either the statute or the regulation against command by officers in one health care category over officers in another.<sup>182</sup> Therefore, any restriction against a dentist's commanding a physician, or a nurse's commanding a physician, for

example, is based purely on written policies or unwritten practices not articulated in departmental regulations.<sup>183</sup>

Judge Advocates. Until 1984, there was no express restriction on command by judge advocates. That year marked the latest event in the "de-line-ation" of Air Force judge advocates, to use an old word in a new way.

In 1967, there was virtually no official distinction between a judge advocate and any other staff (support) officer. In 1968, the Air Force approved a distinctive badge for judge advocates, contrary to what at the time was a well-known departmental disdain for speciality badges.

In 1975, judge advocates were permitted to form their own promotion competitive category, and consequently started to compete against themselves alone for promotion. Before, they competed in the Line of the Air Force competitive category. This event probably marked the beginning of the notion that a judge advocate was really not a line officer. By then, Air Force people for the most part equated "line" status, whatever it meant, with membership in the Line of the Air Force promotion competitive category.<sup>184</sup>

In 1984, The Judge Advocate General of the Air Force informed judge advocates that they could not command without first getting his approval. Before then, judge advocates from time to time took advantage of opportunities to experience command for temporary periods.

That proscription originally took the form of an opinion,<sup>185</sup> which in 1986 was incorporated as a rule in a departmental regulation.<sup>186</sup> The rule—that is, the requirement for prior approval by

The Judge Advocate General, amounts to a limitation of command eligibility for judge advocates.<sup>187</sup>

Students. Students may not command their schools.<sup>188</sup> This restriction is regulatory, not statutory, and first appeared in an Air Force regulation in 1953.<sup>189</sup> Doubtless, it is based on traditional notions about the proper role and place of students relative to faculty.

Officers on Extended Active Duty (EAD) and Officers Not on EAD. This distinction provides a limitation on command that is strictly regulatory. The applicable regulation provides: "Officers not on EAD may not succeed to command of units of the Regular Air Force. Officers on EAD may not succeed to command of units of the Air Force Reserve."<sup>190</sup>

The intent here seems to have been one of ensuring that units of the Air Force Reserve, a separate operating agency,<sup>191</sup> are commanded only by "pure" reserve officers—officers not on the active-duty list—who belong to that separate operating agency, and that those officers themselves do not command units of other establishments.

If so, the regulation falls short of that objective by confusing "EAD"<sup>192</sup> and the "active-duty list."<sup>193</sup> Some reserve officers are on both EAD and the active-duty list, while others are on EAD but not the active-duty list. Others reserve officers yet are on neither.

Officers Who Command Flying Units or Aircraft. The rules here are regulatory and traditional only, formerly having some basis in statute,<sup>194</sup> but not now. Basically, the applicable regulations provide that a flying unit can be commanded only by a pilot or navigator on active flying status, and that an aircraft can be commanded only by a pilot.<sup>195</sup> The real problem here is in determining whether a unit is a flying unit under a somewhat complex definition.<sup>196</sup>

Officers Who Command Health Care Organizations. Only officers who belong to the promotion competitive categories for health care providers<sup>197</sup> can command an organization "whose primary mission involves health care or the health professions."<sup>198</sup> These categories encompass officers who are physicians, dentists, nurses, medical service personnel, and biomedical sciences personnel. There is no departmental regulation that limits command of Air Force hospitals to Air Force physicians alone.

### III. COMMAND SUCCESSION

Command succession means a change of command—one officer takes command and becomes the commander, usually simultaneously with another officer's losing it and becoming the former commander.<sup>199</sup>

There are several possible reasons for changing commanders. The usual ones include the reassignment or retirement of the existing commander, or his prolonged absence, incapacitation, or death. Sometimes an officer is reassigned to an organization for the express purpose of taking command, and other times an officer already in the organization takes command. Occasionally, an officer from outside the organization will take command without ever being assigned to the organization.<sup>200</sup>

Change of command ceremonies are impressive events, filled with "pomp and circumstance" and "ruffles and flourishes." However, while most spectators view these ceremonies as the legal mechanism by which command changes hands, in reality they frequently have no legal significance at all, and in fact in these cases command does not change hands during the ceremony. This is because there are certain legal prerequisites or requirements for taking command, and these may or may not have been satisfied before the ceremony.

In fact, the requirements can be satisfied before, during, or after the ceremony. For example, one cannot assume command of an organization if he has not yet "signed out" of his old organization.<sup>201</sup> Yet, many ceremonies are held just as the old commander is about to depart, and the new commander arranges to travel



to the organization in a temporary duty status to participate in the ceremony. In these cases, the "new commander" returns to his losing organization to wrap up his affairs there before making a permanent change of station.

Thus, the ceremony itself can be either the actual culmination of the requirements—in which case it indeed marks the change of command—or simply a media event for the benefit of the spectators, the members of the organization, and the press.

There are two ways by which an officer can take command. One is by assuming command, and the other by being appointed to command. Organizational commanders take command by either means. Nonorganizational commanders ordinarily take it by appointment, although it is possible to assume nonorganizational command of some types.<sup>202</sup>

#### A. Assumption of Command

Assumption of command is a unilateral,<sup>203</sup> volitional<sup>204</sup> act. Any officer, acting on his own, who otherwise meets the requirements for assuming command, may take command of an organization by this method.

The Act of Assuming Command. Once the requirements have been satisfied, all that is necessary is for the officer to say or do something that evidences a present intent to move the command to him. He could say, "I assume command," as in a change of command ceremony, or just remain silent and see to the publication of a command succession order.<sup>205</sup> Or, he might simply act like a commander without

uttering the words or publishing an order. Especially if there is no opposition by another officer, this might amount to a constructive assumption of command.<sup>206</sup>

Kinds of Assumptions of Command. There are two kinds of assumptions, permanent and temporary. These terms have absolutely nothing to do with whether the command is expected to last for a definite or indefinite period.

Permanent actions are not permanent in the sense that they will last forever or even indefinitely. They simply imply that the officer losing command is not expected to reclaim it later, and that the officer taking command will keep it until he, himself, loses it by any means other than a reclamation by the officer from whom he took it.<sup>207</sup>

Temporary actions, on the other hand, start out with the idea that the officer losing command is going to be temporarily absent but is expected to return, that the officer taking command will keep it only until the other officer returns, and that the other officer will indeed reclaim it on return.<sup>208</sup>

The Air Force has devised written order formats to accommodate both permanent and temporary assumptions.<sup>209</sup> By departmental regulation,<sup>210</sup> there is a special procedure for returning command to the officer who first loses it in a temporary assumption. Very simply, he is revested with command automatically on his return, without any need to publish orders of his own or even to do anything at all. This all flows from the publication of temporary assumption orders, rather than permanent assumption orders.

The procedure for temporary assumptions probably was devised in contemplation of the proposition that command cannot be shared,<sup>211</sup> that is, that an organization can have only one commander at a time. In other words, if a commander cannot conveniently exercise command during a particular absence, then he would have to give up his position if someone else is to exercise command.

Doubtless, this is why the Air Force has emphasized that there is no such thing as an acting commander,<sup>212</sup> even while there may be acting heads of staff.<sup>213</sup>

Requirements for Assuming Command. There are four requirements that must be met before an officer can assume command. He must be eligible to command,<sup>214</sup> a member of the organization that will be commanded,<sup>215</sup> present for duty,<sup>216</sup> and senior in rank<sup>217</sup> to any other officer who is eligible, a member, and present.

Orders Not to Assume Command. Although not a requirement for assuming command, there is a fifth condition that must be considered. This is the officer's personal freedom to assume command. If an officer is ordered not to assume command,<sup>218</sup> even though he otherwise satisfies all the requirements, he can be expected to refrain from performing this unilateral act. However, this can create two interesting situations.

First, no other officer will then be able to assume command, because no other officer could then satisfy the seniority requirement as long as the "forbidden" officer is present. This means that, if another officer is to take command, an appointment will have to be used, if indeed the requirements for an appointment can be satisfied.

In this connection, it is arguable that every appointment without regard to seniority involves an "implied" order to the senior officer to refrain from assuming command.

Second, notwithstanding the order to the contrary, if the "forbidden" officer fails to refrain, that is, if he goes ahead and assumes command anyway, he still becomes the commander! He may have violated the Uniform Code by failing to obey the order, or he may have a legitimate and compelling reason based on military exigencies for doing what he did, but in either case he is the commander.<sup>219</sup>

When to Assume Command. There are several short guides to this. An officer can assume command any time he satisfies the four requirements. He should not assume command when he is properly ordered not to. He ought to assume command whenever he satisfies the requirements and his own commander or a higher authority tells him to assume command (or, in the absence of specific direction, whenever military exigencies so dictate).

The Air Force has given scant guidance in this area, perhaps because it is nearly impossible to foresee with specificity the almost infinite variety of circumstances that bear on the question.

There is hardly a question if the regularly assigned commander dies or leaves the organization permanently.<sup>220</sup> The real problem is when the regularly assigned commander is absent only temporarily. Most organizations can function for short periods when the commander is absent, and some commanders apply the reins of command efficiently even from long distances and for long periods, or even while in a leave status.<sup>221</sup> Other commanders run organizations which can function

indefinitely with only a vice commander or deputy commander at the helm.

Still yet, there are commanders at very high levels who should almost never be replaced during temporary absences, for Congress intended them to retain their commands under virtually all conditions.<sup>222</sup>

Temporary absences are of greatest concern in those organizations where the commander is heavily engaged in Uniform Code actions—actions that can be performed by the commander only, and not by a vice commander, deputy commander, or other staff officer. These usually are squadrons and groups,<sup>223</sup> but they can include any level of command respecting actions against a member of the commander's staff.<sup>224</sup>

Some organizations involved in Uniform Code actions on a regular basis work a command succession whenever the regularly assigned commander will be absent in any status for a week or more. Other organizations use longer or shorter periods as a "rule of thumb."

The Air Force has made two policy pronouncements in this area, which have led to some surprising results. The pronouncements are:

In the event of the prolonged absence of the commander, the next senior officer present for duty within the organization or unit and eligible . . . should assume command until relieved by proper authority.<sup>225</sup>

No advance determination of what is a prolonged absence can be made, for this depends not only on the expected length of the absence, but on the types of command actions and decisions that will be necessary during the absence.<sup>226</sup>

Enter the United State Air Force Court of Military Review. In 1981, the United States Court of Military Appeals explained its

philosophy about command succession. In U. S. v. Kalscheuer,<sup>227</sup> the question was whether a deputy base commander could lawfully issue a search authorization during the temporary absence of the commander, without taking command himself. In other words, at issue was the deputy base commander's authority as the deputy base commander during the commander's absence.

The Court, in holding that the deputy base commander has the authority to issue search warrants under those circumstances, said:

[W]e are chiefly concerned with the functional aspects of command. Thus, we need not examine the minutiae of Service directives which concern devolution of command. See e.g., Air Force Regulation 35-54. Since, at the time and place in question, [the deputy base commander] was functioning as the commander and was treated by others as the commander in connection with the command decisions then being made, we are satisfied that he also may be equated with [the base commander] in connection with [the search authorization].<sup>228</sup>

The United States Air Force Court of Military Review apparently learned little or nothing from the Kalscheuer case, for, since 1985, it has invalidated court-martial decisions<sup>229</sup> of at least six Air Force commanders,<sup>230</sup> declaring that the incumbents did not succeed to command properly under AFR 35-54, and therefore were not commanders at all! Yet, in every case these "commanders" were accepted, treated, and regarded as commanders by officials throughout the Air Force, including their own Air Force judge advocates.

In U. S. v. Miner,<sup>231</sup> the latest of the cases and one representative of all the others,<sup>232</sup> the Court of Military Review was determined to decide which of two officers was the real commander. A was the regularly assigned commander and the senior rank-

ing officer in the organization (the only colonel). B, a lieutenant colonel, took command during A's temporary absence, using the appointment method. (The appointment method was used, rather than the temporary assumption method, because B was not the senior ranking lieutenant colonel then present and eligible for command.) A then returned and retook command, using the permanent assumption method.

The Court struck down A's court-martial decisions which were made after he returned, holding that he could not lawfully assume command—even if he were eligible for command, a member of the organization, present for duty, and senior in rank—because, in the Court's view, the "prolonged absence" clause of AFR 35-54<sup>233</sup> permits assumptions (which succeed appointments) only when the appointed commander being replaced embarks on a prolonged absence. In this case, B was the commander being replaced, and he was not only not absent for a prolonged period, he was not absent at all!

In a brilliant dissenting opinion, Judge Stewart pointed out that other parts of AFR 35-54<sup>234</sup> "make it abundantly clear" that, in effect, the prolonged absence clause was not intended to be a limitation on when an officer may assume command, but merely an example of when an officer should assume it. Also, he effectively concluded that the rule for succeeding an appointed commander was no different than the rule for succeeding a commander who took command by an assumption.<sup>235</sup> Judge Stewart accused the majority of being "pre-occupied" with the prolonged absence clause, and he decried the Court's decisions in the previous cases on this point. In effect, he stated that it was time for the Court to redirect its peculiar attention on command succession issues to something else.

In a short but compelling companion dissenting opinion, Judge Lewis asked in the Socratic fashion what was A's job after he returned, if not the commander, and who was A's commander after he returned, if B could not be because he was junior in grade.<sup>236</sup>

The Judge Advocate General has ordered that U. S. v. Miner and its companion cases be sent to the United States Court of Military Appeals for review at that level.<sup>237</sup>

### B. Appointment to Command

By definition, an appointment to command an organization is not a unilateral act of the officer who is appointed. It is the act of another—one with enough authority to be able to vest and divest officers of command.

Kinds of Appointments to Command. There are two kinds of appointments: appointments without regard to seniority<sup>238</sup> and other appointments.<sup>239</sup> An appointment without regard to seniority can be made only of an officer who is equal in grade to the senior ranking officer. In this connection, it may be instructive to review the appointment statute again:

When the . . . Air Force . . . has on duty in the same organization two or more commissioned officers of the same grade who are otherwise eligible to command, the President may assign the command without regard to rank in that grade.<sup>240</sup>

Note also that there is no apparent requirement, either in the appointment statute for appointments without regard to seniority, or elsewhere for other appointments, that the officer to be appointed be a



member of the organization. In the statute, the words, "on duty in the same organization" are used. This has been widely viewed as meaning that the officer need only be informally attached to the organization for full-time or part-time duty. And, this applies to either kind of appointment.<sup>241</sup>

Appointments without regard to seniority are used whenever the appointing authority or some other authority desires to keep command away from one or more senior officers in an organization. This goes with a corollary desire for a junior ranking officer of the same grade to take command. Sometimes, it is not apparent which desire is stronger, that is, which is the end and which is the means.

"Other" appointments are used in a variety of circumstances. One reason may be to appoint the senior ranking officer, rather than to let him take command by assuming it, because of a concern over the validity of the assumption process.<sup>242</sup> Another may be to appoint the senior ranking officer who, although a member of the organization, may not be present for duty. Still another may be to appoint an officer from outside the organization who, although he will be senior, will not be assigned to the organization in the manning sense.<sup>243</sup> Still another yet may be to appoint the "commander" of a unit segment, such as a squadron section or a detachment.<sup>244</sup> Finally, all commanders in "positions of importance and responsibility" are appointed.<sup>245</sup>

Appointing Authorities. Technically, there is just one appointing authority for appointments without regard to seniority—the President—and one for other appointments—the commander at an appropriate level of command.<sup>246</sup> Whoever the appointing authority is, he

may be exercising legal power when appointing, but not really selecting a commander. In other words, he frequently is too far removed from the organization to know the command situation personally, and he must therefore react to information and recommendations supplied by others.<sup>247</sup>

Although Congress has given the President the authority to appoint without regard to seniority, and has not named any other appointing authority in the appointment statute, the President seldom makes these appointments personally. Rather, they are made by lesser commanders on a delegation basis. The appointment statute has existed in one form or another since 1920.<sup>248</sup> When the U. S. Air Force was established in 1947, it inherited many administrative procedures from the U. S. Army, from which it was carved. One of these was a delegation theory under the statute, by which lesser commanders could make appointments without regard to seniority and in the name of the President.

The theory is known as the "alter ego doctrine."<sup>249</sup> Under this, the Secretary of the Air Force acts for the President, or is the President's "alter ego," in all matters involving the Air Force, except for matters that are nondelegable to the Secretary by law. Under this doctrine, express delegations, while perhaps desirable, are not required in all cases.

Acting as the President's "alter ego," the Secretary of the Air Force has taken the President's authority under the appointment statute by one hand, and has re delegated it by the other hand to all establishment commanders down to and including wing commanders and their equivalents for "units of their command," that is, units in their

respective establishments.<sup>250</sup>

Thus, the appointing authority for appointments without regard to seniority is the parent establishment commander or a higher commander in the chain of command,<sup>251</sup> except for commanders of group or equivalent establishments. For units belonging to a group, the appointing authority is the commander of the establishment to which the group belongs—such as the wing commander—or a higher commander in the chain. This all flows from the "alter ego doctrine" and the Secretary's redelegation.<sup>252</sup>

Because the redelegation gives commanders appointing authority only over "units of their command"—which connotes a subdivision of the appointing authority's own command—an appointing authority may not appoint his own successor.<sup>253</sup>

As to "other" appointments, that is, those with regard to seniority, the permissible appointing authorities are not prescribed in any present Air Force regulation. However, there is no reason why these appointments cannot be made by the commanders of the parent establishments at any level, including group level, or even by unit commanders themselves when appointing "nonorganizational" commanders such as squadron section commanders and detachment commanders.<sup>254</sup>

Terminating Appointments. Appointments to command are not much different than assumptions of command as far as ending them is concerned. Obviously, they end on the commander's death or retirement. They also end when another officer has been appointed, or when another officer assumes command of the organization.<sup>255</sup> They do not necessarily end when the appointed officer is reassigned, absent, or

incapacitated, although these conditions might result in the appointment of another officer or in another officer's assuming command.

However, there is one important difference between appointments and assumptions when it comes to terminations. While the Air Force has a procedure for temporary assumptions,<sup>256</sup> there is no corresponding procedure for appointments. All appointments are considered to be permanent in the sense that they do not end automatically when a former commander—who was absent only temporarily—returns.<sup>257</sup> Thus, if the regularly assigned commander is absent temporarily and his successor takes command by the appointment method, the regularly assigned commander must affirmatively retake the command on return,<sup>258</sup> either by an assumption<sup>259</sup> or an appointment—if he is to command again.

Obviously, it need not be emphasized that an appointment without regard to seniority cannot be terminated by the senior officer's assumption of command, if both officers were present at the time of the appointment and at the time of purported assumption. Otherwise, the appointment statute would be meaningless.<sup>260</sup>

Appointment Orders. The format for orders reflecting appointments without regard to seniority are prescribed in a departmental regulation.<sup>261</sup> The only formats for "other" appointments deal exclusively with appointing squadron section and detachment commanders.<sup>262</sup> Nevertheless, it is not a difficult matter to tailor the orders correctly.<sup>263</sup> Orders are not always necessary,<sup>264</sup> but they are always desirable, no matter the kind of appointment.<sup>265</sup>

#### IV. STAFF COMMAND

In the nineteenth century, General Sir Edward Hamley wryly observed that tactics in the British Army "is the opinion" of the senior commander present.<sup>266</sup> In the twentieth century, one need look only at what is happening in the area of "staff command" to get the impression that organizational doctrine in the U. S. Air Force is largely the opinion of the senior staff officer present.

##### A. History

Staff command is command of staff assistants by staff officers. It enables a staff officer to wear two hats—staff officer to an operational commander, and nonoperational commander of his own staff. It entails creating separate legal organizations—squadrons—that exist ostensibly for one purpose—to do staff work. It bestows all the increased legal power of a commander over the commanded.<sup>267</sup>

Historically, "dual hatting" has been an accepted practice in technical staff fields where the general workforce requires relatively specialized training and performs highly discrete functions.<sup>268</sup> The cohesiveness of a separate organization in these fields so enhances mission efficiency as to outweigh any risk of setting up a power seeker for small purpose or a power abuser for no purpose. This has traditionally been a legitimate justification for organizational status. Such fields encompass the technical side of the special staff, but not the administrative side, and never the general staff.<sup>269</sup>

Thus, in the Air Force, a typical wing includes "nonoperations"<sup>270</sup> squadrons or similar units that perform missions in civil engineering, health care, communications, supply, transportation, and security. On the other hand, mere staff agencies handle the wing's business in areas such as central administration, personnel, recreation, intelligence, safety, fiscal affairs, religious affairs, and legal affairs.<sup>271</sup> Of all the principal subordinates of the wing commander, only the base commander (who is the head of aggregated technical and administrative staffs), and the surgeon are "dual hatted."<sup>272</sup>

#### B. Motivation for Change

The end of the Vietnam War has given staff officers and their leaders and "lobbyists" at the highest levels the opportunity to better observe and react to internal trends in the Air Force that affect them personally.<sup>273</sup> One of the most important of these has occurred in the area of promotions. In today's Air Force, one can take something akin to "judicial notice" that commanders are promoted as a group quicker and with greater frequency than are staff officers as a group. Simply stated, commanders seem to be valued more than staff officers in the Air Force. Almost every Line of the Air Force lieutenant colonel now knows that, if he "fills the commander square," that is, if he is or has been a squadron commander, his chances of being selected for promotion to colonel will be substantially enhanced. The role of command experience in the "promotion potential" equation is even more marked when one considers that only about a half of the

lieutenant colonel force will ever be promoted to colonel.<sup>274</sup>

As General William Tunner, the great airlifter of "Hump" and Berlin fame, observed, a good staff officer is both intelligent and industrious, whereas a good commander is merely intelligent.<sup>275</sup> And, it has been no different in the modern Air Force. Ingenious staff officers, led by knowledgeable personnel officers, have sought to enhance their own promotion potential by turning administrative staffs into squadrons, and themselves into commanders!<sup>276</sup>

### C. New Commands

The way was paved for this effort when, in 1979, the Air Force allowed major commands to convert base "services" staffs into services squadrons. These were the agencies that ran the billeting, food service, and mortuary functions, among others.

In 1983, the general subject of staff command was discussed enthusiastically at a conference of major command directors of personnel.<sup>277</sup>

In 1985, the Air Force gave the go ahead to the major commands to convert many of their comptroller staffs to comptroller squadrons.<sup>278</sup>

In 1983, one large organization was allowed to form a squadron out of a supervision structure that functioned nicely for years without organizational status.<sup>279</sup> In 1985, a major command changed the name of many of its shift supervisors to "crew commanders."<sup>280</sup> In 1986, another major command changed the name of two supervision structures to squadrons, and the name of their heads to commanders.<sup>281</sup>

The best known example of all involves the current test of "mission support squadrons." These are aggregations of at least the base personnel, social actions, and administrative staffs, and frequently the moral, welfare, and recreation (MWR) staff as well.<sup>282</sup> The senior officer among them, usually the director of personnel,<sup>283</sup> becomes the squadron commander.

Under this concept, which ostensibly is based on the objective of improving the base commander's span of control,<sup>284</sup> the mission support squadron commander consolidates administrative staff heads under his command who previously reported directly to the base commander.<sup>285</sup> This provides a new "layer" between the nonpersonnel staffers and the base commander.

In return for taking a few of these staffers under his "wing," the director of personnel acquires a new title and new power, while the personnel community loses its most experienced operative and the nonpersonnel staffers lose stature. The base commander's job becomes less complicated and probably easier. One can only guess about what happens to the quality of staff services across a large number of mission support squadrons. One thing is certain: If the test is approved for Air Force-wide implementation, yet another squadron structure will join the Air Force.

#### D. New Concerns

The common feature of all of these conversions and name changes is that, in not one case did their missions change.<sup>286</sup> Yet, in every case, knowledgeable officers currently affiliated with each example



freely professed the primary motivation for the conversion or change to be the specter of enhanced promotion potential for the new commander.<sup>287</sup>

The immediate concern for judge advocates is the larger number of officers at a typical Air Force base who now have the awesome power over people's lives that flows from the Uniform Code.<sup>288</sup> These officers inherit no tradition in matters of command from their predecessors, and it has been difficult enough to guide those who do. If nothing changes, these new commanders need to be trained and nurtured in the proper exercise of that power.

The concern for the Air Force as a whole is whether this trend represents a legitimate<sup>289</sup> or a "counterfeit"<sup>290</sup> increase in command positions,<sup>291</sup> and whether the stature of other commanders is aided or diminished accordingly. The ultimate issue, of course, is whether the trend ought to be continued, accelerated, slowed, stopped, or even reversed. This issue is beyond the scope of this article. However, that there even is an issue speaks of the need for a more widely taught and more widely believed doctrine on the subject of staff command.<sup>292</sup>

## V. NONORGANIZATIONAL COMMAND

Earlier, the point was developed that there are two kinds of organizations in the Air Force, namely, establishments and units.<sup>293</sup> Also, there are three kinds of units: headquarters units, squadrons (or numbered flights), and miscellaneous units (such as named units).<sup>294</sup> The commander of the headquarters unit also commands the establishment to which the headquarters unit belongs.<sup>295</sup> Establishments are legal entities such as groups, wings, divisions, numbered air forces, and major commands, and their equivalents.<sup>296</sup>

When an officer is a commander but does not command an establishment or a unit, he is a nonorganizational commander. That is, he commands an activity or function, as well as the military members then participating in the activity or function. He does not command a legal entity or the people assigned or belonging to the entity, except insofar as those people participate in his activity or function.

While organizational command is usually permanent or indefinite, nonorganizational command tends to be of shorter and more definite duration, although it need not necessarily be.

### A. Significance of Nonorganizational Command

Nonorganizational commanders exist in the Air Force because there is a need for someone to combine the elements of a commander—authority and responsibility—and apply them to certain activities or functions. "Nonorganizational" activities invariably

involve difficult, dangerous, or stressful undertakings for which a mere supervisor may not suffice, such as operating an airplane or being ready to launch an underground-based missile. "Nonorganizational" functions involve unit segments that are very important to unit mission, but not so important to justify a unit status of their own.

Aside from the structural aspect, there are two other major differences between nonorganizational and organizational commanders.

First, nonorganizational commanders, with the exception of squadron section commanders and detachment commanders, do not have the kind of authority that organizational commanders have when it comes to taking action under the Uniform Code.<sup>297</sup> For example, they may not impose nonjudicial punishment under Article 15.<sup>298</sup> This reason is that, with those two exceptions, a nonorganizational commander is not an immediate commander of anyone. He commands an activity or a function, and the military members then participating in that activity or function. At the time of that participation, those members remain under the immediate command of an organizational commander.

Thus, again subject to those two exceptions, it is the immediate organizational commander who is the central actor in imposing discipline against those members.<sup>299</sup>

Second, the reason for the first difference actually amounts to a difference in and of itself: a nonorganizational commander, with the two exceptions of a squadron section commander and a detachment commander, is not the immediate commander of anyone. The doctrine is that a military member has only one organizational commander!<sup>300</sup>

Does this mean that an organizational commander can share command with a nonorganizational commander? The answer is simply and

logically yes, insofar as a member's participation in the nonorganizational commander's activity or function is concerned.<sup>301</sup> Again, the doctrine is that organizational command cannot be shared!<sup>302</sup>

This is hardly a practical problem, however. Most "nonorganizational" activities last only for short periods (for example, flying as a passenger in an airplane commanded by an aircraft commander). All "nonorganizational" functions (that is, participating in a unit segment) are performed in an organization, which means that both the member and the nonorganizational commander are under the same organizational commander.

So, the question may be asked, if commanders have both authority and responsibility, just what kind of authority does a nonorganizational commander have that a mere supervisor does not have?

Very simply, he has all the special power of an organizational commander when it comes to issuing orders that must be obeyed.<sup>303</sup> He also enjoys the enhanced protections of an organizational commander against disrespectful treatment by the military members participating in his activity or function.<sup>304</sup>

#### B. Examples of Nonorganizational Command of Activities

Aircraft Commanders. The U. S. Air Force is in the flying business, yet there is no definitive definition of "aircraft commander" in any current departmental publication. The DOD Dictionary defines this position as "[t]he aircrew member designated by competent authority as being in command of an aircraft and responsible for its safe operation and accomplishment of the assigned mission."<sup>305</sup> AFM

11-1, "U. S. Air Force Glossary of Standardized Terms," defines it as "[t]he crew member authorized to command an aircraft."<sup>306</sup> Another regulation specifies that the aircraft commander, "regardless of rank," commands all persons aboard the aircraft, and that he must be a pilot.<sup>307</sup> There is no departmental regulation that prescribes the duties of aircraft commanders, although this has been done by some flying commands in their own regulations.<sup>308</sup>

Prisoner of War Commanders. As shown earlier,<sup>309</sup> under the Code of Conduct For Members of the Armed Forces of the United States,<sup>310</sup> the senior detainee who is not accorded noncombatant status, that is, who is a prisoner of war, will always be in command of the prisoners as far as the United States is concerned.<sup>311</sup> This applies even though the senior combatant is an enlisted member.<sup>312</sup> The prisoners remain assigned to organizations located on friendly territory, so the command in the prisoner of war camp is nonorganizational.

Interestingly, at least one prisoner of war group attempted to set themselves up as an organization, but this was a unilateral effort of no legal significance, and was done primarily to improve the morale of the prisoners.<sup>313</sup> Prisoner of war commanders have special problems not usually encountered by other commanders,<sup>314</sup> but there have been recent efforts to improve their legal authority.<sup>315</sup>

Air Troop Commanders. This is the senior ranking passenger traveling with members who are deploying by air under mobility orders.<sup>316</sup> The duties of an air troop commander, while many, are menial.<sup>317</sup> This position, a minor and temporary post, can lawfully be filled by an enlisted member.

Shelter Commanders. According to a departmental regulation, "[t]he shelter commander will be the senior person in the shelter in an emergency or disaster and will be responsible for maintaining order and discipline in the shelter. The position is not predesignated and requires no special training."<sup>318</sup> This position, too, could lawfully be filled by an enlisted member.

Security Police Shift Commanders. These are the officers who serve with security police "alpha" flights. Each flight is responsible for a rotating shift, and the objective is to have a commissioned officer on duty with the security police at all times. Each flight has one such officer, usually a lieutenant. He provides "continuous supervision," makes "critical decisions and judgments," and serves as a "visible manifestation of security police authority, at all times."<sup>319</sup>

Missile Combat Crew Commanders. These are the officers who head the underground crews that are always ready to launch underground-based missiles.<sup>320</sup>

Space Operations Crew Commanders. These are the officers who serve in the stressful jobs of heading the shift workers of Air Force Space Command's missile warning, space surveillance, air defense operations, and satellite operations crews.<sup>321</sup>

Education and Training Commanders. The Air Force has an history as long as its own existence of using lots of command titles in education and training environments. Air Force schools are frequently broken up into internal structures for ease of supervising the

students. These structures may be given names such as squadrons, groups, and wings. Of course, for example, they are not groups as in combat support groups, or wings as in flying wings. Moreover, sometimes they are not even organizations at all, but "pseudo" units.<sup>322</sup>

But the head officer nonetheless is given a title such as group commander or wing commander. The Air Training Command is a prodigious practitioner of this, using both organizations and nonorganizations, at its technical training centers and elsewhere. The United States Air Force Academy uses some of these structures too, and also brings to the Air Force the colorful British term, "air officer commanding." (The latter is the military training supervisor of a specified number of cadets.) The Air Force Reserve Officer Training Corps, control of which has fluctuated between Air University and Air Training Command, has "area commandants" for regional supervision of its college and university detachments. But, no "area" is an organization. Air Training Command's Officer Training School has its own "special duty identifier" code of 0950, "Training Commander, OTS."<sup>323</sup>

#### C. Example of Nonorganizational Command of Functions (Unit Segments)

Squadron Section Commanders. Squadron sections are often confused with units. However, they are not organizations, and therefore they are not units.<sup>324</sup> Rather, they are unit segments.<sup>325</sup> A headquarters squadron section, for example, is a segment or "section" of a headquarters unit in an establishment. A squadron section can

also exist in large squadron units as well, in which case they are simply "sections" of the squadron unit.<sup>326</sup>

Squadron section commanders, along with detachment commanders, represent the only two cases of nonorganizational command where the commander is considered an immediate commander of military members. Thus, they displace their organizational commanders, as far as the members who are subject to their authority are concerned. The reason for this is the permanency of their positions, the permanency of the unit segments, and the fact that the very reason they were set up was to function like immediate commanders.<sup>327</sup>

While squadron section commanders displace organizational commanders, squadron sections do not displace organizations. A member who is subject to the authority of the squadron section commander is nonetheless not a member of the squadron section in the manning sense—no one is—but is merely attached to the squadron section.

To achieve the full range of authority of an organizational commander, squadron section commanders must be formally appointed on administrative orders.<sup>328</sup> An appointment to command is used because an assumption of command requires the assumer to be a member of the organization,<sup>329</sup> and no one is a member of a squadron section.<sup>330</sup>

The question often arises, who is the appointing authority for squadron section commanders? No answer is given, or limits placed on this in departmental regulations. It would therefore appear that even the commander of the unit—of which the squadron section is a segment—can make the appointment.<sup>331</sup>

When a squadron section is created, and providing the commander is formally appointed, all enlisted members—of the particular unit of



which the squadron section is a segment—are automatically attached to the squadron section and automatically placed under the command of the squadron section commander.<sup>332</sup> The same does not hold true for the commissioned officers of the unit.

Officers can be attached to a squadron section only by publishing administrative orders that attach them.<sup>333</sup> Moreover, in most cases, no officer can be attached who is senior in rank to the squadron section commander.<sup>334</sup> Some organizations attach fewer than all of their officers, perhaps officers in specified grades only,<sup>335</sup> if any are attached at all.<sup>336</sup>

If officers are not attached to the squadron section on orders, then, as to them, the squadron section commander is a mere administrative officer who provides administrative support but not administrative control.<sup>337</sup> If officers are affirmatively attached, even then the squadron section commander will be limited in the kinds of disciplinary actions he can impose on those officers.<sup>338</sup>

Detachment Commanders. Detachments not only are not units,<sup>339</sup> they usually are not even located with a unit.<sup>340</sup> Rather, they are geographically separated unit segments.

Like squadron sections, detachments are given special status: their commanders displace organizational commanders and become immediate commanders. Also, like squadron sections, no military member is assigned to a detachment. The assignment is to the unit, with an attachment to the detachment.

Detachments are formed primarily to satisfy a need for a commander, that is, to control a group of geographically separated

members with a commander, rather than with a mere supervisor.<sup>341</sup> The detachment commander must, of course, be an officer,<sup>342</sup> and like a squadron section commander, must be appointed formally on administrative orders.<sup>343</sup> Appointments are used rather than assumptions, for the same reasons as apply to squadron section commanders.<sup>344</sup> The appointing authority situation is the same as well.<sup>345</sup>

"Alpha" Flight Commanders. There are two kinds of flights in the Air Force, numbered and lettered. Because the latter use the alphabet, they are generally referred to as "alpha" flights. The difference between numbered and "alpha" flights is substantial. Numbered flights are units, and thus organizations.<sup>346</sup> Their commanders are organizational commanders in every sense—commanders at the lowest organizational level in the Air Force. "Alpha" flights, on the other hand, are mere shreds of units—unit segments—that are used primarily to divide up people who do essentially the same type of work, like fly airplanes.<sup>347</sup> "Alpha" flights are not units.<sup>348</sup> They are frequently used in flying squadrons and security police squadrons.<sup>349</sup>

Named Activity Commanders. Named activities are unit segments, not units, and thus not organizations.<sup>350</sup> Named units, on the other hand, are miscellaneous units, and thus organizations.<sup>351</sup> A good example of such a unit is an Air Force hospital at a typical base. Named activities may or may not be headed by an officer with the title, commander. If they are, it is exceedingly difficult for an outsider to know whether the operation is a named unit or a named activity. About

the only sure way of learning the status, without help, is to examine the organizational documents of the parent establishment.<sup>352</sup>

The main purpose of creating a named activity is to separate a specific mission from different or unrelated missions in the unit--to give the specific mission a separate identity.<sup>353</sup> Therefore, named activities serve the opposite function of "alpha" flights. A good example of a named activity is the Air Force Judge Advocate General School, a segment of Air University's Center for Professional Development.<sup>354</sup>

#### D. Nonorganizational "Noncommand"

Air Force members work together in a variety of structures. If the structure is not an organization, then it is a nonorganization. If the head of a nonorganization is not called a commander, there is no question of nonorganizational command status. For example, the group of people known as the Office of the Staff Judge Advocate at a typical base belong to a nonorganization headed by the staff judge advocate, a noncommander—a mere supervisor. (Like all members who belong to a nonorganization, they also belong to an organization too, but the organization—a combat support group, for example—is not their immediate working environment.) But what if the nonorganizational structure is a bit more formal, or the head given commander-like authority? Here are some examples:

Operating Locations. These unit segments are very much like detachments in that they are geographically separated from their units;

however, they do not have commanders.<sup>355</sup> Clearly, they are not units.<sup>356</sup> They also are usually very small, sometimes one or two people. When a commander is not needed on the scene, an operating location may suffice. When one is needed, however, a detachment or other structure will have to be used. An example is the area defense counsel and the area defense administrator, who make up an operating location of the Air Force Legal Services Center<sup>357</sup> at a typical base.

Air Force Elements. Air Force Elements are "pseudo" units,<sup>358</sup> rather than unit segments. Instead of making up a unit or being part of a unit, they are highly informal groups of Air Force members who work in agencies outside the Air Force.<sup>359</sup> The agencies include joint service or unified organizations, or other government departments such as the Department of State. While the members may work for supervisors in those agencies, and even be under outside authority on an indefinite basis, the Air Force must account for them. This is done with the nonorganizational categorization of Air Force Elements.

The senior officer in an Air Force Element at any given location is considered an Air Force representative, even though he may not supervise or even work around the other Air Force members in the element. Probably for practical reasons alone—the need for someone on the scene with a commander's authority to take disciplinary action, for example—the Air Force has given the senior officer substantial commander-like powers.<sup>360</sup> This is a good illustration of "near" command, that is, of not being a commander in name, but having some attributes of a commander in actuality.<sup>361</sup>

Staff Structures. Some staff structures are so powerful and autonomous that they almost function like a unit. They are not units, however, but "pseudo" units.<sup>362</sup> Common staff structures in the Air Force range from directorates to divisions to branches to sections. They also include "offices" such as the Office of the Staff Judge Advocate at a typical base. When they get very large and have highly identifiable missions, they start to approach "pseudo" unit status. Most notable among these are the deputy chiefs of staff at the Air Staff and at the major commands, and the Office of The Judge Advocate General. Even lesser structures can be viewed as "pseudo" units, for example, the Air Force Claims and Tort Litigation Staff in the Air Force Legal Services Center.<sup>363</sup>

Surprisingly, the heads of staff structures that are "pseudo" units sometimes have the authority, like a commander's, to take adverse administrative actions against the military members assigned to them—actions that a mere supervisor cannot ordinarily take in his own right.<sup>364</sup>

Permanent Professors at the U. S. Air Force Academy. This is an interesting case of nonorganizational "noncommand" simply because of a statute that speaks of permanent professors in the same sentence with command. That statute provides: "The permanent professors and the registrar [of the United State Air Force Academy] exercise command only in the academic department of the Academy."<sup>365</sup>

This is based on an older and similar statute that applies to the United States Military Academy. The legislative intent was to preclude high ranking professors who might have little or no field

experience—especially those appointed directly from civilian life—  
from commanding a military operation.<sup>366</sup> However, the way the statute  
was written implies that the permanent professors may command an  
"academic" operation or organization. Notwithstanding the statute's  
implication, the permanent professors and registrar at the United  
States Air Force Academy have never exercised command "in the academic  
department of the Academy."<sup>367</sup>

VI. CONCLUSION

The U. S. Air Force has some work to do on command and staff doctrine. It is not that the Air Force lacks a basic doctrine here, but rather that this ground has gone somewhat unaided and unattended since the Air Force broke away from the Army in 1947. As a result, only bits and pieces of command and staff doctrine are articulated in Air Force publications. Doctrine is supposed to be widely taught and widely believed, but that will not happen if it is underdeveloped and underexpressed.

The nation has been at peace long enough for the Air Force to get a look at some of the consequences of this void:

—It is quite obvious that the Air Forces's own Court of Military Review does not fully understand some of the basic principles involved in command succession. Its decisions in this area, if extended along their logical courses, will produce absurd results.

—Air Force staff officers who do not have command, and who never had command, are now getting command. This may be a legitimate or counterfeit evolution, but the motive—to enhance a staff officer's promotion potential—is clearly illegitimate.

—Many commanders do not command organizations, but activities and functions. There is a big difference between organizational command and nonorganizational command. However, in all likelihood, few Air Force members know what it is. A nonorganizational commander may

be little more than a mere supervisor, but he is not quite the same thing.

With the recent transfer of responsibility over the Air Force's primary publication about command to the judge advocate community,<sup>368</sup> the time is ripe to correct doctrinal deficiencies. Judge advocates cannot do this alone, however. The people who work full time in the doctrinal process must be asked to help, if not to lead. Publications in related areas, most notably organization policy, must be brought in jeopardy too.

The very basic points that should be expressed seem obvious. Perhaps they are so obvious that they are taken for granted and then overlooked—all the more reason to write them down. They include such principles as:

—An organization—and a military member—has only one organizational commander. The member always has an immediate commander, but the commander is not always found in the member's unit. In other words, an organization does not always have a commander. This is because organizational command does not change hands automatically. However, there must never be a void in the command of people. Therefore, the organizational "veil" can be pierced so the member can "reach up" to find his immediate commander higher in the chain of command.

—To command, one must be eligible to command.

—The senior officer in an organization who is eligible and present has a duty to take command. The duty of taking command, but



not command itself, devolves on him.

—Only that senior officer can take command unilaterally. However, another officer of equal grade, but of lower rank, can be appointed to command by someone who has the power to vest and divest officers of command.

—Because they wield awesome power that can be abused, commanders should not be set up without good purpose. In a warfighting organization, operational commanders serve a good purpose. Nonoperational commanders may or may not serve such a purpose. Command of staff workers by staff officers usually serves a good purpose in technical fields, but not usually in basic administrative fields.

—Nonorganizational commanders command activities and functions, much like supervisors supervise these. But, they can have a little more power, if not stature, than mere supervisors.

It is important for all warriors, including judge advocates, to think clearly and systematically about command and staff structure. It is doubly important for judge advocates to correctly advise commanders and staff officers in this area. As groups, commanders and staff officers want to do what is right, but sometimes they need help. Those warrior-lawyers who do not think systematically about command and staff doctrine may not be able to advise them correctly, and consequently will have done little to aid the organizational "health" of the Air Force at the time of the next war.

### FOOTNOTES

1. Quoted in M. de Melito, Memoirs at 113 (Fleischmann trans. 1881). General Bonaparte made this statement to Count Miot de Melito in a conversation in 1798. In 1816, after enjoying power as Emperor Napoleon I of France twice--once for 10 years and once for 100 days, with a short abdication (and exile to Elba) in between--and after abdicating a second time (with final exile to St. Helena), the former emperor enlarged this proposition: "[As] soon as I was in command I no longer recognized either master or laws." Conversation with Emmanuel Las Cases, quoted in J. Herold, The Mind of Napoleon at 278 (1955) (emphasis added).

2. This statement was inspired by Colonel Thomas A. Fabyanic, USAF (Ret.), a prolific commentator in contemporary journals on aerospace doctrine. Cf. Fabyanic, "War, Doctrine, and the Air War College," Air U. Rev., Jan.-Feb. 1986, at 2, 5: "The most fundamental and vital task for the professional officer is to understand war; this obligation takes precedence over all others."

3. Cf. Ehrhart, "Some Thoughts on Air Force Doctrine," Air U. Rev., Mar.-Apr. 1980, at 29, 33: "Doctrine evolves from three sources: theory, technology, and historical experience." See also A.F.M. 1-1, Mar. 16, 1984 at v:

Aerospace doctrine is an accumulation of knowledge which is gained primarily from the study and analysis of experience. As such, doctrine reflects what has usually worked best. These experiences may include actual combat operations as well as tests, exercises, or maneuvers. In those less frequent instances where experience is lacking or difficult to acquire . . . doctrine may be developed through analysis of postulated actions

4. Professor Williamson Murray, a frequent visitor to the Air War College, perhaps said it best: "One of the critical factors facing military organizations is the articulation of doctrine: the conceptual framework within which one plans and trains one's forces in peace . . . so that they reach maximum effectiveness in battle." Murray, "A Tale of Two Doctrines: The Luftwaffe's 'Conduct of the Air War' and the USAF's Manual 1-1," J. Strategic Stud., Dec. 1983, at 84.

5. See D.O.D. Dictionary of Military and Associated Terms (J.C.S. Pub. 1, Jan. 1, 1986) at 118:

DOCTRINE—Fundamental principles by which the military forces or elements thereof guide their actions in support of national objectives. It is authoritative but requires judgment in application.

See also A.F.R. 1-2, ¶ 1b(5), Jul. 25, 1984: "U. S. Air Force doctrine . . . [p]rovides a point of departure for every activity of the Air Force."

6. This popular conception of doctrine has been attributed to Professor I. B. Holley, Jr., of Duke University, arguably the academician who has had the greatest influence on the development of aerospace doctrine since World War II. See, e.g., Drew, "Of Trees and Leaves: A New View of Doctrine," Air. U. Rev., Jan.-Feb. 1982, at 40, 41.

7. See Ehrhart, supra note 3, at 35, quoting Major General Dale O. Smith: "The best doctrine is worthless if it is not well-known and believed."

8. Officially, there are three kinds of aerospace doctrine, namely, basic, operational, and tactical. The first covers fundamental and enduring beliefs about airpower and maintaining aerospace forces; the second, the uses of aerospace forces; and the third, employment of specific weapons systems, See A.F.M. 1-1, Mar. 16, 1984, at v-vi. Organizational concerns have not always been regarded as the province of doctrine in the U. S. Air Force. See R. Futrell, Ideas, Concepts, Doctrine: A History of Basic Thinking in the United States Air Force 1907-1964 (1971) at 4. See generally H. Wolk, Planning and Organizing the Postwar Air Force 1953-1947 (1984). However, in the mid-1950s, organizational doctrine eventually took a foothold as part of basic doctrine. See R. Futrell, supra. See also A.F.M. 1-1, Mar. 16, 1984, at v: "[A]erospace doctrine drives how the Air Force organizes, trains, equips, and sustains its forces." (Emphasis added.) Organizational doctrine is now firmly entrenched in basic doctrine. See A.F.R. 1-2, ¶ 2a, July 25, 1984. Also, some writers have given organizational doctrine a completely different meaning than the meaning contemplated in this article, AFM 1-1, "Basic Aerospace Doctrine of the United States Air Force," and AFR 1-2, "Assignment of Responsibilities for Development of Aerospace Doctrine." See, e.g., Drew, supra note 6, at 45.

9. Still, not much organizational doctrine on command and staff structure has shown up in AFM 1-1 for it to be upheaved from there. Rather, the primary writers of this kind of doctrine have been

functional offices of primary responsibility, not doctrine "gurus," and the primary sources have been functional Air Force regulations such as AFR 35-54, "Rank, Precedence and Command," and AFR 26-2, "Organizational Policy and Guidance." There is nothing necessarily wrong with this except that it is not exactly in conformance with the scheme for the control, development, and direction of Air Force basic doctrine set up in Air Force regulations. See A.F.R. 1-2, ¶ 5a, July 25, 1984. Speaking of the organization set up to manage that scheme in the U. S. Air Force, Professor I. B. Holley said: "What is a sound organization? Ultimately, no organization is better than the procedures devised to make it function." Holley, "Of Saber Charges, Escort Fighters, and Spacecraft," Air U. Rev., Sept.-Oct. 1983, at 2, 10. Query whether Holley's observation applies not only to doctrine organizations, but also to doctrine about organizations. As far as other sources of command and staff doctrine go, there are not many. Aside from unwritten traditions and customs, and some judicial pronouncements about Air Force practices, there are a few statutes in Title 10 of the United States Code, but they cover only very narrow facets of the subject. Three statutes apply to all the military services [10 U.S.C. §§ 747, 749-50 (1982)], two to the Air Force specifically [id. at §§ 8579, 8581], two to the Army specifically [id. at §§ 3579, 3581], and ten to the Navy and Marine Corps [id. at §§ 5942-49, 5951-52]. Skeptics who do not believe that doctrine can be the subject of legislation need look no further than AFM 1-1, much of which has been philosophically adopted by Congress and codified as positive law in Title 10. The most notable example is the concept of unified action armed forces. See 10 U.S.C. §§161-166 (Supp. IV 1986).

10. 10 U.S.C. §§ 801-940 (1982 & Supp. IV 1986) [hereinafter referred to in text as Uniform Code and cited as U.C.M.J.].

11. Query whether the following applies: "Command structures . . . must be clear, simple, and unencumbered to permit ease of execution." A.F.M. 1-1, Mar. 16, 1984, at 2-9. Also: "Command structures are developed to ensure the effective employment of forces in war or other crises. These structures are developed and executed in peacetime to ensure a smooth transition from normal conditions to crises situations. . . . Commanders must organize . . . as they intend to fight." Id. at 4-3. See also A.F.R. 26-2 ¶¶ 1-6a, 1-8, Jan. 6, 1982; A.F.R. 26-6, ¶ 1, Nov. 16, 1983. These official pronouncements may have been influenced by experience, common sense, or by the following statement by one of the nation's great generals: "In time of peace we should preserve the 'habits and usages of war,' so that, when war does come, we may not be compelled to suffer . . . confusion . . . ." W. Sherman, Memoirs 406 (1891).

12. Professor I. B. Holley has written that there are three phases in the doctrinal process: (a) the collection phase, when relevant information is obtained; (b) the formulation phase, when conclusions flowing from that information are postulated and evaluated; and (c) the dissemination phase, when doctrine is sanctioned, published, and taught. Holley, "The Doctrinal Process: Some Suggested Steps," Mil. Rev., Apr. 1972, at 2. In terms of Holley's article, this article is working at the second phase. The author intends it as an acceptance of a 1984 "open invitation" by the then head of the Air Force "doctrine office" to participate in the process that Holley described: "Professional Air Force officers throughout our service

should be contributing to the process of refinement and growth [of doctrine] through their study, discussion, and writing." Krieger, "USAF Doctrine: An Enduring Challenge," Air U. Rev., Sept.-Oct. 1984, at 16, 24. This article is not, however, the kind of critical, dissenting, and visionary piece envisioned by the current head of the "doctrine office." See Kline, "Where Have All the Mitchells Gone?," Air U. Rev., May-June 1982, at 28. Rather, it is one officer's small attempt to help ensure that the United States will not soon suffer the fate described by General Sir William Butler, when he wrote: "The nation that will insist upon drawing a broad line of demarcation between the fighting man and the thinking man is liable to find its fighting done by fools and its thinking done by cowards." W. Butler, Charles George Gordon 85 (1920).

13. For some "classics" on the qualities and conditions that go into making a great—or even just effective—commander, more or less in list form, see M. Blumenson & J. Stokesbury, Masters of the Art of Command 2-7 (1975); E. Puryear, Nineteen Stars 393-95 (1971); E. Wavell, Soldiers and Soldiering 13-35 (1953); S. L. A. Marshall, Men Against Fire 163-64 (1947); B. H. Liddell Hart, Thoughts on War 218-28 (1944); J. F. C. Fuller, Generalship: Its Diseases and Their Cure 23-35 (1936); A. Jomini, The Art of War 50-51 (G. Mendell & W. Craighill trans. 1862); L. Henry, Napoleon's War Maxims With His Social and Political Thoughts (1899); and Sun Tzu, The Art of War 65 (S. Griffin trans. 1963). As to the qualities of great staff officers, it has been said: "The only qualities required in a staff officer that a commander need not possess in order to be successful are tact, lack of emotion, prudence, and a pleasant disposition." Glew, "A Study of

Commanders and Staff Officers," Mil. Rev., Nov. 1954, at 73, 77.

14. For some excellent discussions about how these three or four concepts differ from each other, see R. Taylor & W. Rosenbach, Military Leadership: In Pursuit of Excellence (1984); Harris, "A Perspective on Leadership, Management and Command," Mil. Rev., Feb. 1984, at 49; Roberts, "Management and Command: Possible Confusion Today?," TIG Brief, July 16, 1976, at 2; and Catton, "A Personal Concept of Command," in D. Johnson, Concepts of Air Force Leadership 374 (1970). The following may apply: "[T]he art of command is the least understood of all military phenomena. Military schools have taught more about leadership, management, administration, and map-reading than they have about command." R. Nye, The Challenge of Command: Reading for Military Excellence 19 (1986). (The main theme of Nye's superb book is that good commanders are good readers.)

15. Query whether Socrates' question applies: "How can a man understand the name of anything, when he does not know the nature of it?" Plato, "Theaetetus," The Dialogues of Plato, in 7 Great Books of the Western World 515 (1952).

16. See generally A.F.P. 110-3, ch. 13. May 17, 1976.

17. See A Comprehensive Etymological Dictionary of the English Language 151 (3d ed. 1971); 2 A New English Dictionary of Historical Principles 667 (1893).

18. J.C.S. Pub. 1, Jan. 1, 1986 [hereinafter referred to as the DOD Dictionary and cited as J.C.S. Pub. 1]. The Secretary of Defense has directed that this dictionary will be used throughout the Department of Defense, subject to some exceptions, to ensure uniformity in the application and use of the terms listed. D.O.D. Dir. 5000.9,



Mar. 23, 1981.

19. J.C.S. Pub. 1, at 76. The following "military" dictionaries are in substantial accord: W. Heflin, The United States Air Force Dictionary 128 (1956) (not currently an official dictionary of the U. S. Air Force); P. Hayward, Jane's Dictionary of Military Terms 42 (1975); J. Quick, Dictionary of Weapons and Military Terms 111 (1973); and F. Gaynor, The New Military and Naval Dictionary 60 (1951). The following "civil" dictionaries are in substantial accord: 1 Webster's Third New International Dictionary of the English Language 455 (1981); Funk & Wagnalls Standard Dictionary of the English Language 262 (1962); and The American Heritage Dictionary 296 (2d ed. 1982). Nonetheless, there still is confusion even within the military services as to what command is—or at least as to who is a commander—owing principally to the fact that every member of the military has a boss. The uninitiated can see only a blurred line of demarcation between a person who gives the orders, i.e., a supervisor, and a person who is responsible for the mission, i.e., a commander. This is particularly evident when the person giving the orders is a senior commissioned officer with a "strong personality," and the person receiving them is a new recruit. Query whether the following applies: "Believe it or not—to paraphrase Ripley—the most important term used in the exercise of military authority is not concisely defined." Davis, "Command and Command Relationships," Mil. Rev., Feb. 1955, at 24. On some additional confusion about whether the highest military staff officers and the highest civilian officials are commanders, see infra notes 54-58. On whether a typical wing commander's principal subordinates are commanders, see infra note 65. For an example of how even a

notable author on the art of command can see a commander when, legally, only a high staff officer is there, see Nye, supra note 14, at 20. For an example of how the Department of Defense can characterize all positions occupied by four-star generals as "special command positions" for purposes of Section 2387 of Title 10 of the United States Code, see D.O.D. Dir. 1100.12, Apr. 26, 1971. (The directive authorizes those incumbents, and others, to spend appropriated funds to purchase table linens, dishes, glassware, silver, and kitchen utensils for use in the government quarters they occupy.)

20. There is a notable trend, of late, to include a third element, namely, accountability. See, e.g., Watkins, "The Principle of Command," Proceedings, Jan. 1983, at 32, 33: "[C]ommand is fundamentally a trinity of authority, responsibility, and accountability."

21. In both Article 90 and Article 92 of the Uniform Code, the orders of commanders are given a special status. Among other things, Article 90 proscribes willfully disobeying a "superior commissioned officer." In accordance with the Manual for Courts-Martial, United States 1964 [hereinafter cited as M.C.M.], part IV, ¶¶ 14c(1)(a)(i) & 13c(1), a "superior commissioned officer" is a commissioned officer who is either (a) superior in rank and not inferior in command, or (b) superior in command even if inferior in rank. (For a definition of rank, see infra text accompanying note 93.) There is an exception which applies to superior commissioned officers and subordinates who are members of different armed forces. In that case, a "superior commissioned officer" is one who is (a) superior in the chain of command, or (b) senior in grade and a prisoner of war, when the subordinate himself is a prisoner of war and, presumably, detained in

the same prisoner of war camp. (For a definition of grade, see infra text accompanying note 92.) The prisoner of war exception does not apply to a superior who is a "medical officer" or chaplain. (For suggestions of some problems in defining "medical officer," see infra note 78.) Another article of the Uniform Code--Article 92--proscribes, among other things, the simple failure to obey a lawful order. Here, willfulness is not an element of the offense, nor is the "superiority" of the person who issued the order. However, in accordance with M.C.M., part IV, ¶ 16b(2)(c), a duty to obey the order is an element. In accordance with M.C.M., part IV, ¶ 16c(2)(c), a subordinate has a duty to obey the lawful orders of a "superior" as that term is used in "superior commissioned officer" under Article 90. This definition is explicit for subordinates and superiors who are members of different armed forces, and implicit for those who are members of the same armed force. Therefore, under both Article 90 and Article 92, a commander's lawful orders are penally sanctioned, even when they would otherwise not be if the person issuing the orders were not the commander--for example, in the case of a commander who is junior in rank to the person receiving the orders. A helpful way to look on this proposition is to take an example of two colonels, A and B, where A outranks B. If A is B's commander, B owes the duty of obedience to A. However, if B is A's commander, which frequently is the case in wing's throughout the Air Force, A owes B the duty of obedience and B has no duty of obedience to A.

22. Article 89 of the Uniform Code proscribes disrespect toward a "superior commissioned officer." This term has an identical meaning here as it does under Article 90 for willful disobedience

offenses. M.C.M., part IV, ¶ 13c(1). See supra note 21. Therefore, commanders again are given special treatment that they otherwise may not have as mere commissioned officers. It is interesting to note that Article 90, detailed supra note 21, also accords commanders an enhanced protection from the crime of assault. This article also proscribes assaulting a "superior commissioned officer"--again as that term is used for willful disobedience and disrespect offenses. However, there is an additional element of the assault offense which is not applicable to the other offenses. That is, the superior commissioned officer must have been in the execution of his office at the time of the assault. (The assault offense under Article 90 provides an increased penalty over what is available for all forms of assault under Article 128. An exception applies to wounding a victim with a gun, for which the Article 90 and Article 128 offenses are identical in penalties except in time of war, in which case Article 90 again provides the greater penalty.) But, in effect, the additional element is not applicable to assaults against most commanders! See M.C.M., part. IV, ¶ 14c(1)(b): "[T]he commanding officer of a unit in the field is generally considered to be on duty at all times."

23. There are several functions, tasks, and procedures in the realm of imposed discipline that, by law, can be performed only by immediate commanders. There are others that, by custom, are usually performed only by immediate commanders. Without distinguishing the two categories, these include, inter alia, (a) imposing pretrial restraint such as conditions on liberty, restriction in lieu of arrest, and confinement (Rule for Courts-Martial [hereinafter cited as R.C.M.] 304); (b) authorizing noncommissioned officers to order confinement

(U.C.M.J., art. 9 (b)); (c) making a preliminary inquiry into reported offenses (R.C.M. 303); (d) making the initial decision on how to dispose of offenses or charges, to include taking no action, taking adverse administrative action, imposing nonjudicial punishment, or forwarding charges with a recommendation for court-martial (R.C.M. 306, 401-02); (e) dismissing charges (R.C.M. 402(1)); (f) imposing nonjudicial punishment or taking supplementary action on nonjudicial punishment under Article 15 of the Uniform Code (M.C.M., part V; A.F.R. 111-9, Sept. 12, 1984); (g) preferring charges (R.C.M. 307); and (h) authorizing and ordering inspections and inventories (Military Rule of Evidence [hereinafter cited as M.R.E.] 313). Perhaps to a lesser extent than higher commanders in the Air Force, immediate commanders also authorize and order probable cause searches under M.R.E. 315. In the area of adverse administrative actions, immediate commanders in the Air Force make recommendations or final decisions respecting: (a) reprimands and admonitions; (b) control rosters; (c) unfavorable information files and unit files; (d) promotion selection records; (e) digest files; (f) propriety of promotion; (g) propriety of appointment to the Regular Air Force or to indefinite reserve status; (h) vacation or denial of noncommissioned officer status; (i) denial of reenlistment; (j) propriety of reassignment; (k) removal from supervisory positions; (l) demotion; (m) denial of voluntary retraining; (n) enrollment in drug and alcohol rehabilitation programs; (o) revocation or suspension of base driving privileges and government vehicle driver licenses; (p) enrollment in remedial driver training programs; (q) disapproval of awards and decorations; (r) suspension or revocation of base recreation facility privileges; (s)

extra military training; (t) unfavorable comments on evaluation reports; (u) "lost" time not creditable for pay, pay longevity, service obligation, retirement, and other purposes; (v) reclassifications to different career fields; (w) reliability to work near or with special weapons; (x) propriety of attending certain schools and courses; (y) involuntary discharge; and (z) the general quality of everyday life in one's military unit. This list could go on, but one time through the alphabet should be sufficient to illustrate the power that immediate commanders can have flowing from personnel programs alone--power that mere supervisors do not have. Immediate commanders also have power not possessed by mere supervisors in areas other than imposed discipline. For example, there are certain determinations made by commanders under Title 37 of the United States Code that affect the amount of a member's pay and allowances. See generally Op. JAGAF 1978/52, May 5, 1978.

24. One famous general and his judge advocate may not concur: "There is no command action which is free from . . . review--or free from complaints upon which further review is also required. There is a fundamental anomaly that vests a commander with life-or-death authority over his troops in combat but does not trust the same commander to make a sound decision with respect to justice and fairness to the individual." Westmorland & Prugh, "Judges in Command: The Judicialized Uniform Code of Military Justice," 3 Harv. J. L. & Pub. Pol'y 1, 56 (1980).

25. There are other uniformed officers--both military and nonmilitary--who have substantial legal authority over people. Military officers who are supervisors have more legal authority over other people than military officers who are not supervisors. Policemen

have legal authority to do things to other people that ordinary citizens do not have. Prison guards have enormous legal authority over prisoners. While these segments of officialdom may have substantially more legal authority to do unpleasant things than corporation presidents, they hardly have the same quality of authority over the people in their ambit as a military commander has over the people in his.

26. On the other hand, "[c]ommand may be defined as a function that has to be exercised, more or less continuously, if the army is to exist and operate." M. Van Creveld, Command in War 5 (1985).

27. Query whether the following applies: "Military command requires a concentration of power in one person—power begotten by unusual legal ordination and energized by the will of a person to wield that power." R. Nye, supra note 14, at 19. Cf. Op. JAGAF 1986/56, June 6, 1986.

28. Query whether the following applies: "Peculiar to the martial art is the concept that all decision making, all action, all expression of moral restraint, is centralized in the person of the Commander. R. Nye, supra note 14, at 16.

29. Quoted in M. Van Creveld, Command in War i (1985). Van Creveld's book, first cited supra note 26, is arguably the best one-volume exposition on the nature and history of command in modern military literature. In the last analysis, Van Creveld concludes that, not only is there no qualitative difference between command now and command at the time of Caesar, but also there is little difference between modern command and command by a "Stone Age chieftain." See id. at 9.

30. See infra notes 238-65 and accompanying text.

31. For a discussion of nonorganizational command, see infra text accompanying notes 293-367.

32. For example, a shelter commander commands only as long as there are people in the shelter. On the other hand, the incumbent commanding a squadron section--which is not an organization, but a segment of an organization--might remain in command longer than the incumbent commanding the parent organization.

33. See infra notes 161-98 and accompanying text.

34. This is chaplains. See infra note 177.

35. This is enlisted members. See infra notes 169-76 and accompanying text.

36. A.F.R. 26-2, ¶ 2-4a, Jan. 6, 1982. See generally Callendar, "The Evolution of the Air Force NCO," A.F. Mag., Sept. 1986, at 169 (suggests that the Air Force dropped the title, "commanding officer," to shed "the outward evidences of the Army connection.") Query whether the term "director," as used for the heads of the "Defense Agencies" and "Department of Defense Field Activities" which have recently been established by statute, is another permissible term for "commander." See generally the "Goldwater-Nichols Department of Defense Reorganization Act of 1986," Pub. L. No. 99-433 (Oct. 1, 1986), 100 Stat. 992 (codified in part in scattered sections of 10 U.S.C.), at § 301. The Director of the Air National Guard is a commander only when he is designated as a major commander. See Op. JAGAF 1972/101, Sept. 8, 1972.

37. A.F.R. 26-2, ¶ 2-4a(3), Jan. 6, 1982. "Commandant" is not defined in the DOD Dictionary or in AFM 11-1, vol. 1, U.S. Air Force Glossary of Standardized Terms, Jan. 2, 1976. (The latter is published



by the Air Force to complement the DOD Dictionary, in accordance with Department of Defense Directive 5000.9, supra note 18.) Accordingly, AFR 26-2 appears to be the only source of meaning for this term in the Air Force. In the other military services, the term can denote commanders of organizations other than schools. Historically, it denoted a temporary commander. See generally E. Farrow, Farrow's Military Encyclopedia 380 (1885).

38. 10 U.S.C. § 9334 (a) (1982); A.F.R. 26-2, ¶ 2-4a(2), Jan. 6, 1982.

39. A.F.R. 26-2, ¶ 2-4a(1), Jan. 6, 1982. The commanders of at least two Air Force major commands—United States Air Forces in Europe (USAFE) and Pacific Air Forces (PACAF)—use the title commander in chief, yet neither command is unified or specified. The authority for this is not stated in AFR 26-2, nor is it otherwise apparent. For an excellent discussion of the etymology of "commander in chief," see L. Eure, "COMMANDER-IN-CHIEF," (June 1960) (unpublished manuscript available in Air University Library).

40. See A Comprehensive Etymological Dictionary of the English Language 711 (3d ed. 1971); E. Partridge, Origins 657 (1958).

41. There also are combined staffs, integrated staffs, joint staffs, and parallel staffs (see J.C.S. Pub. 1 at 338), but these are made up of officers who are either of the general staff or the special staff.

42. Id. at 156. Another definition of "general staff" is one that wields executive or operational control over the fighting force. In this version, called the "great general staff," the members constitute a separate and elite corps, are carefully selected, serve

permanently, are intensely educated in the "operational art," wear distinctive uniforms, and even are sometimes headed by an officer who reports directly to the head of state, i.e., who is co-equal with the prime minister or other head of the civil government. (If not, the head is at least co-equal with the minister of war.) This, of course, is the model for the Prussian General Staff, which eventually became the German General Staff and most correctly was called the German Great General Staff. It controlled the Prussian-German "war machine" from the time of Frederick the Great to the end of World War II. It stood for militancy, military excellence, and efficiency. In the United States, and elsewhere, it was both admired and feared. In this article, such a staff structure is referred to as a great general staff. See generally W. Goerlitz, History of the German General Staff 1657-1945 (1953). For some statutory provisions designed to help ensure that the United States will not have a great general staff, see infra notes 55, 58.

43. J.C.S. Pub. 1 at 336. This definition introduces the terms, coordinating staff and personal staff, which are not further defined in the DOD Dictionary. As used in the definition, it appears that the former is a synonym for general staff, and the latter a name for a group consisting of aides-de-camp, executive support officers, etc. Accord W. Heflin, supra note 19, at 143, 230, 381. According to one authority, "special staff" is nothing other than a misnomer for "specialist staff." Id. at 482.

44. These definitions apparently contemplate and encompass only the officers who report directly to the commander, i.e., the immediate staff. The other officers, enlisted members, and civilians

who report directly or indirectly to the officers on the immediate staff must therefore be considered the assistants of the immediate staff. Query whether they could properly be considered the staff of the immediate staff. Can a staff officer have a staff of his own, as that term has been defined throughout history and as it is presently defined in the DOD Dictionary? Query whether those few noncommissioned officers and civilians who report directly to the commander can be considered staff, or even staff officers under those definitions.

45. Accord W. Heflin, supra note 19, at 486 (can include officers and civilians); P. Hayward, supra note 19, at 154 (can include officers and soldiers); J. Quick, supra note 19, at 419 (can include officers and civilians); F. Gaynor, supra note 19, at 240 (officers only). See also J. Hittle, The Military Staff: Its History and Development 1961:

[A]ll staffs perform the basic functions of procuring information for the commander, preparing details of his plans, translating his decisions and plans into orders, and then causing the orders to be transmitted to the troops. It is also, according to our theories of staff functioning, the duty of the staff to bring to the commander's attention any matters which require his action, or about which he should be informed, and make a continuous study of the existing situation and prepare tentative plans for possible future action. Another important function of the staff officer is to supervise the execution of plans and orders and to carry out the commander's intentions.

Id. at 3. Hittle's book is to staff what Van Creveld's book is to command. See supra note 29. It is interesting to note Hittle's observation that, in an earlier era, but not now, the staff of a commander also included the lesser commanders of units subordinate to the commander. Id. at 11. Hittle was apparently referring to

subordinate operational commanders, for there are numerous examples today of staff commanders, i.e., staff officers who command their assistants. See, e.g., infra note 65. See also, e.g., infra notes 266-292 and accompanying text. Hittle's observation is of a former practice that originated either with the Ancient Greeks or the Romans. See generally Ney, "High Military Command," Mil. Rev., July 1968, at 17. 19.

46. See supra text accompanying notes 26-29. See also J.F.C. Fuller, supra note 13, at 65. Query whether the following applies: "The staff officer may actually make many more decisions than the commander. However, the staff officer's exercise of authority for or in the name of his commander and the responsibility of the staff officer to his commander should not be misconstrued to be the same thing as the ultimate assumption of authority over and responsibility for his unit and mission, which lie only with the commander." Cannon, "One Viewpoint on Command," Air U. Q. Rev., Summer 1963, at 25, 28.

47. When people talk about military philosophers, two names are mentioned before all others: Clausewitz and Jomini. Clausewitz wrote next to nothing on staff doctrine. Jomini, on the other hand, devoted a substantial part of his great Précis de l' Art de la Guerre of 1838 to advancing the following proposition: "Governments should take the precaution to publish well-considered regulations, which should define the duties of staff officers and should give clear and accurate instructions as to the best methods of performing these duties." A. Jomini, supra note 13, at 231.

48. See Paret, "Napoleon and the Revolution in War," in Makers of Modern Strategy from Machiavelli to the Nuclear Age 137 (P. Paret

ed. 1986).

49. General Sherman had a biting tongue on this subject: "A bulky staff implies a division of responsibility, slowness of action, and indecision, whereas a small staff implies activity and concentration of purpose." W. Sherman, supra note 11, at 402. Also: "[A]ny general commanding an army, corps, or division, that has a staff-officer who professes to know more than his chief, is to be pitied." Id. He reached a "crescendo" with: "The staff-officer has but one duty before obeying, and that is to . . . ask his orders." Id. at 404.

50. See generally W. Manchester, American Caesar (1978); C. Blair, MacArthur (1977). Some believe that General MacArthur was an admirer of the German general described by Lieutenant General William H. Tunner in his book, Over the Hump:

[W]hen asked how he assigned his personnel, [he] replied he first determined if they were lazy or industrious, intelligent or unintelligent. The commanding officer, he said, should be lazy and intelligent. The man who is lazy and unintelligent makes a good greeter, a front-office man. The man who is industrious unintelligent—get rid of him. But the man who is both industrious and intelligent is your staff officer.

W. Tunner, Over the Hump 71 (1964).

51. Some commentators have argued that these compartmented staffs have effectively taken over from the commander: "The modern staff officer . . . appears more like a chief of a bureaucratic unit and less like an adviser to the commander. In this sense, an Air Force unit seems more like a collection of bureaucratic units, each receiving guidance and direction from the corresponding higher echelon."

Mussman, "The Unit Commander and the Bureaucracy," Air U. Rev., Sept.-Oct. 1973, at 83, 85. But see infra text accompanying note 60.

52. The great military historian, J.F.C. Fuller, pointed this out graphically: "The staff becomes an all-controlling bureaucracy, a paper octopus squirting ink and wriggling its tentacles into every corner. Unless pruned with an axe it will grow like a fakir's mango tree, and the more it grows the more it over shadows the [commander]." J.F.C. Fuller, supra note 13, at 66-67. See also Cannon, supra note 46, at 33; F. Traynham, "The Large-Unit Staff," Air U. Q. Rev., Fall 1956, at 51, 52.

53. See 10 U.S.C. §§ 8031-8038 (1982 & Supp. IV 1986). Much of the current statutory basis for the Air Staff was provided in the "Goldwater-Nichols Department of Defense Reorganization Act of 1986," supra note 36.

54. See U.S. Const. art. II, § 2, cl. 1: "The President shall be the Commander in Chief of the Army and the Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States . . . ." This provision extends to, and includes the "Air Force of the United States." See generally Maurer, "The Constitutional Basis of the United States Air Force," Air U. Rev., Jan.-Feb. 1965, at 63; Op. JAGAF 1978/36, Apr. 11, 1978.

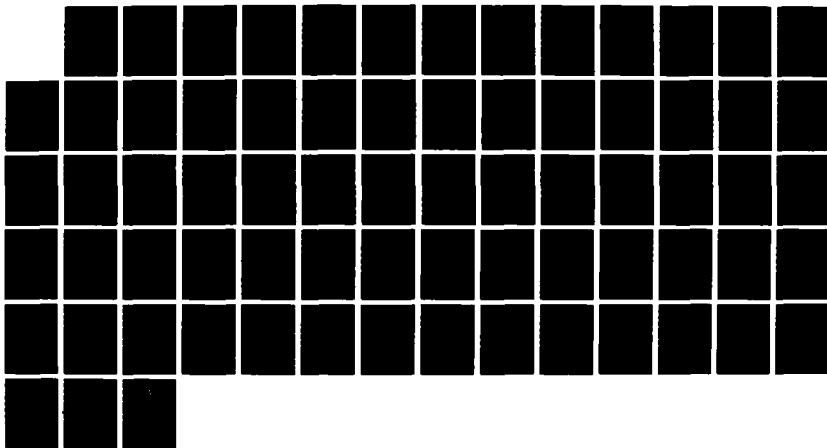
55. The Secretary of Defense is not generally regarded as a commander in either a technical or nominal sense, but his authority is statutorily structured to give him the ability to do virtually everything that a commander can do. In other words, he could be a commander in everything but name only, and his power to be so—like the power of any commander—is limited only by what the President desires.

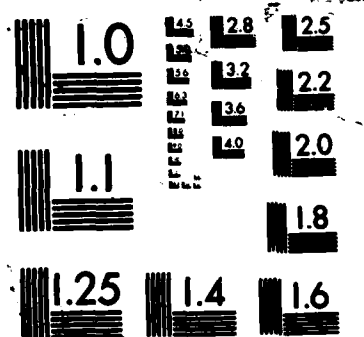
AD-A186 832 IN SEARCH OF COMMAND AND STAFF DOCTRINE(U) AIR WAR COLL 2/2  
MAXWELL AFB AL J R BRANCATO MAY 87 AU-AMC-87-028

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(Query whether the following applies: Confucius say, "when object look like urn, feel like urn, smell like urn, and function like urn, it is urn.") While the Secretary of Defense may not establish a military staff [10 U.S.C. § 131 (c) (Supp. IV. 1986)]—a protection against a great general staff—he is statutorily in the chain of command between the President and the unified and specified combatant commanders! Id. at § 162 (b). (Most military members are or will probably be assigned to a unified or specified combatant command. See id. at § 162 (a).) Another statutory provision refers to the "command function" of the President and the Secretary of Defense. All of these statutes, except the one prohibiting a military staff in the Office of the Secretary of Defense, were first added by the "Goldwater-Nichols Department of Defense Reorganization Act of 1986, supra note 36, an act that by its own terms was designed, inter alia, to "strengthen civilian authority" over the military establishment. Query whether the Secretary of Defense can do things in the military justice arena that may be done only by a commander. Query whether the Secretary of Defense has the protections of commander under the Uniform Code, in addition to the normal protections of a high official of the United States Government. See generally supra notes 21-22.

56. The Secretary of the Air Force is clearly not a commander and clearly not in any chain of command prescribed by statute. He is the head of the Department of the Air Force [10 U.S.C. § 8013 (a) (1) (Supp. IV 1986)] and is responsible essentially for administering the internal affairs of the Department of the Air Force and for preparing the force for assignment to the unified and specified commands. See id. at § 8013 (b). He is the immediate superior and reporting official

of the Air Force Chief of Staff. Id. at § 8033 (c). However, the Chief of Staff does have some independence from the Secretary of the Air Force when it comes to the former's duties as a member of the Joint Chiefs of Staff. See id. at § 8033 (e).

57. Id. at § 8033 (c) (1).

58. As the commander in chief, the President may structure the chain of command in any manner he chooses, subject to legitimate statutory prescriptions and proscriptions to the contrary. See generally Op. JAGAF 1985/82, Sept. 23, 1985; Op. JAGAF 1984/49, Sept. 7, 1984; Op. JAGAF 1983/87, Nov. 10, 1983; Op. JAGAF 1981/42, July 13, 1981. For a scholarly article on this proposition containing citations to the applicable law, see Egeland, "Presidential Functions," 10 AFJAG Rep. 149 (1981). Neither the President nor Congress has done anything to vest command in the Air Force Chief of Staff. However, there is no express statutory prohibition against the exercise of command by the Air Force Chief of Staff. Also, the Secretary of the Air Force may statutorily permit the Chief of Staff to exercise "supervision" over Air Force members and organizations as long as this does not conflict with the authority of the unified and specified combatant commanders. 10 U.S.C. § 8033 (d) (4) (Supp. IV 1986). [There is an express statutory prohibition against the exercise of command by the Chairman and Vice Chairman of the Joint Chiefs of Staff. Id. at §§ 152 (c), 154 (g). There also is an express statutory prohibition against organizing or operating the Joint Staff as an "overall Armed Forces General Staff." Id. at § 155 (e).] Doubtless, the failure to authorize command for the Chief of Staff, and these express prohibitions concerning the Chairman and the Vice Chairman, were meant

to prevent the emergence of a great general staff like the old German model. See generally supra note 42. See also Op. JAGAF 1978/62, June 6, 1978. There also are statutory provisions designed to prevent permanent membership on the Joint Staff and, for that matter, permanent retention of high positions in the military establishment. (Permanent membership is another feature of a great general staff.) These take the form of statutes restricting length of service [e.g., 10 U.S.C. § 155 (f) (1) (Supp. IV 1986)], and statutes limiting eligibility to serve after previous service [e.g., id. at § 155 (f) (3)]. In any case, there is no recognizable commander between the highest subordinate level within the Air Force--major command--and the President. Therefore, the inescapable conclusion is that the President, and not the Air Force Chief of Staff, is the Commander of the U. S. Air Force. See generally Op. JAGAF 1978/62, supra. [Note that the Air Force Chief of Staff is nevertheless the highest ranking officer in the Air Force (excluding any Air Force officer who serves as Chairman or Vice Chairman of the Joint Chiefs of Staff) and therefore takes supreme rank among all commissioned officers in the Air Force with the exception of officers serving in those positions. 10 U.S.C. §§ 152 (c), 154 (g), 743 (Supp. IV 1986). Accordingly, the Air Force Chief of Staff can be a "superior authority" as that term is used in Article 15 (e) of the Uniform Code, for purposes of acting on appeals of nonjudicial punishment. See Op. JAGAF 1961/636, Dec. 22, 1961; Op. JAGAF 1961/354, July 10, 1961.] For media accounts of an unsuccessful attempt to vest command in the Air Force Chief of Staff, see "Solon Balks at Giving AF Chief 'Command' Authority," Ala. J., Jan. 11, 1951, at 2-A, col. 1; "Chief of Air Force Seeks Clear Powers," Wash. Post, Jan. 11, 1951,

at 3-A, col. 1; "Air Force Combats '2d Grade' Status," N.Y. Times, Jan. 11, 1951, at 5-L++, col. 1.

59. See supra note 42.

60. A.F.R. 26-2, ¶ 4-7, Jan. 6, 1982 (emphasis added). Cf. supra note 51. Nonetheless, if one were determined or compelled to categorize a typical U. S. Air Force operational wing along traditional staff lines, the branch categorization might be similar to the following model:

a. General Staff

- (1) G-1. Director of Personnel (D)  
Chief of Social Actions (E)  
Chief of Morale, Welfare, and Recreation (D)  
Chief of Services (D)
- (2) G-2. Chief of Intelligence (A)  
Weather Officer (F)
- (3) G-3. Deputy Commander for Operations (A)  
Chief of Operations and Training (D)  
Chief of Disaster Preparedness (D)  
Chief of Safety (E)
- (4) G-4. Deputy Commander for Maintenance (B)
- (5) G-5. Public Affairs Officer (E)

b. Special Staff

(1) Technical Areas

- Civil Engineer (D)
- Chief of Security Police (D)
- Chief of Supply (C)
- Chief of Transportation (C)
- Communications Officer (F)
- Surgeon (E)

(2) Administrative Areas

- Director of Administration (D)
- Chaplain (D)
- Staff Judge Advocate (D)
- Comptroller (C)
- Chief of Data Automation (C)
- Chief of Procurement (C)

c. Personal Staff

- (1) Executive Officer (E)
- (2) Aide-de-camp (if applicable) (E)
- (3) Inspector (E)

CODE FOR EXISTING FUNCTIONAL SUPERVISION STRUCTURE

- A - Deputy Commander for Operations
- B - Deputy Commander for Maintenance
- C - Deputy Commander for Resource Management
- D - Base Commander
- E - Vice Wing Commander or Wing Commander
- F - Tenant

61. See A.F.R. 26-2, ¶ 2-4, Jan. 6, 1982. "Command elements" include commanders, vice commanders, base commanders, and installation commanders. The base commander is the officer who commands a combat support group or squadron, or an air base wing, group, or squadron. The definition of "installation commander" is neither artfully written nor clear. According to another regulation, vice commanders are not commanders. See A.F.R. 35-54, ¶ 14, Sept. 15, 1981. Cf. A.F.R. 26-2 at ¶ 4-8.

62. See A.F.R. 26-2, ¶ 2-5, Jan. 6, 1982. "Staff elements" include chiefs of staff, deputy chiefs of staff, and the special staff. The latter encompasses "specialized or professional areas; for example, the staff judge advocate, surgeon, public affairs officer, inspector, and scientific advisor." Query whether chiefs of staff, deputy chiefs of staff, and the special staff encompass all staff officers. Surely not.

63. See id. at ¶ 2-6. "Operating elements" include deputy commanders, directorates, divisions, branches, and offices. Query whether all of these might more correctly be included under staff elements.

64. This term is not concisely defined in Air Force directives, although operational command is defined in the DOD Dictionary (see infra note 131), but apparently is given a meaning there that is not much use in distinguishing operational commanders and staff commanders. Nonetheless, most Air Force officers doubtless would understand operational commanders to include the commanders of the units that directly perform the primary mission of the Air Force, such as flying squadrons, missile squadrons, and—to a lesser and looser, but closely related, extent in the view of many observers--maintenance squadrons.

65. See generally infra text accompanying notes 266-92. For a listing of typical subordinates, see supra note 60. Of the listed positions under general, special, and personal staffs, only the chiefs of the traditional special (or "specialist") staffs in traditionally "technical" areas are unit commanders, i.e., head subordinates who aid the chief in his staff functions, and who themselves are organized as a formal organizational unit. The weather officer may be a detachment commander, but a detachment is not an organization or unit in the U. S. Air Force. See infra note 339. Of the five principal subordinates of the wing commander, not counting the surgeon, all five are staff officers. Only the base commander has staff command, i.e., is "dual hatted" as a kind of "chief of installation support" and a commander of an aggregation of subordinate staffs and staff units. Cf. A.F.R. 26-2, ¶¶ 4-4, 4-6, 4-12, Jan. 6, 1982. The vice wing commander and the three deputy commanders are not commanders, but staff officers. A.F.R. 35-54, ¶ 14, Sept. 25, 1981. This follows not only from AFR 35-54, but from traditional staff analysis of their functions, and it holds true

even though they may have operational units or other staff units (that are headed by commanders) under their direct supervision. Cf. W. Heflin, supra note 19, at 486.

66. Accord P. Hayward, supra note 19, at 97; J. Quick, supra note 19, at 278; F. Gaynor, supra note 19, at 151; E. Farrow, supra note 37, at 215; H. Scott, Military Dictionary 388-91 (1864).

67. Supra note 18.

68. W. Heflin, supra note 19.

69. Id. at 301.

70. 10 U.S.C. § 8549 (1982).

71. A.F.R. 35-60, ¶ 2a(1), Jan. 20, 1986.

72. Id. at ¶ 2a(2).

73. Id. at table 1.

74. Id. at figure 1.

75. Id. at figure 2.

76. According to one newspaper account, the combat exclusion for women encompasses only five per cent of all Air Force positions for uniformed members. "AF Opens 1,645 More Positions to Women," A.F. Times, Dec. 29, 1986, at 4, col. 1.

77. Geneva Conventions for the Protection of War Victims, opened for signature Aug. 12, 1949. There are four separate treaties, three of which have relevance: Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field [hereinafter referred to and cited as G.W.S.], adopted by U.S. Feb. 2, 1956, 6 U.S.T. 3114, T.I.A.S. No. 3362, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea [hereinafter referred to and

cited as G.W.S./Sea], adopted by U.S. Feb. 2, 1956, 6 U.S.T. 3217, T.I.A.S. No. 3363, 75 U.N.T.S. 85; and Geneva Convention Relative to the Treatment of Prisoners of War [hereinafter referred to and cited as G.P.W.], adopted by U.S. Feb. 2, 1956, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135.

78. G.W.S., arts. 24, 28; G.W.S./Sea, arts. 36-37; G.P.W., art. 33. The first and third convention refer to "medical personnel," and the second to "medical and hospital personnel." No definition is given. The U. S. Air Force issues the "noncombatant" identity card prescribed by the Conventions at least to all officers who are health care providers in the MC, DC, MSC, BSC, and NC promotion competitive categories, and to enlisted medical technicians. See generally infra text accompanying note 89. According to information obtained by the author from a reliable source at the Air Force Military Personnel Center, there is no precise Air Force-wide definition of "medical personnel" or "medical and hospital personnel" for purposes of this card. As a result, each activity that issues the card is free to make its own interpretations or to ask for guidance through personnel staff channels. This leaves open such issues as whether clerk typists in a hospital and C-9 (and other) aircrews engaged in aeromedical evacuation, for example, should receive the card. The Department of Defense, too, has provided scant guidance on this subject, other than to point out that Article 24, G.W.S., affords G.W.S. noncombatant status to medical personnel who are "exclusively engaged in the search for, or the collection, transport or treatment of the wounded or sick, or in the prevention of disease, [and] staff exclusively engaged in the administration of medical units and establishments . . . ." D.O.D.



Inst. 1000.1, Jan. 30, 1974. Query whether, for internal use only, it would be helpful and appropriate for the Air Force to publish lists of duty specialties, units, and unit elements similar to the lists used in defining combat for women. See generally supra notes 73-75 and accompanying text.

79. G.W.S., supra note 78; G.W.S./Sea, supra note 78; G.P.W., supra note 78. The first and third Conventions refer to "chaplains," and the second to "religious personnel." The U.S. Air Force issues the "noncombatant" identity card prescribed by the conventions for chaplains or religious personnel only to officers in the CH promotion competitive category. See generally infra text accompanying note 89. The Air Force Military Personnel Center has issued guidance to the activities that issue the card to exclude enlisted support personnel (sometimes called "chapel managers").

80. The Conventions do not use the term, "noncombatant," but rather prescribe "special protection" and "special treatment" if captured.

81. Considered in relation to operations officers and maintenance officers, a support officer is, arguably, most correctly defined as an officer who is not an operations officer or a maintenance officer. A support officer can be a line officer or nonline officer by almost any definition of "line."

82. See infra notes 180-83 and accompanying text.

83. See supra note 65. See also infra text accompanying notes 266-92.

84. For the kinds of organizations that can be commanded only by officers with an aeronautical rating, see infra text accompanying

notes 194-196. See generally infra note 167.

85. Just as it may serve no useful purpose to talk about the difference between a line officer and a staff officer, it may be even less purposeful to make the distinction in actuality. In the words of General William Tecumseh Sherman: "The almost entire separation of the staff from the line, as now practised by us, and hitherto by the French, has proved mischievous . . . ." W. Sherman, supra note 11, at 402.

86. Pub. L. No. 96-513 (Dec. 12, 1980), 94 Stat. 2835 (codified in part in scattered sections of 10 U.S.C.).

87. 10 U.S.C. § 621 (1982).

88. D.O.D. Dir. 1320.9, ¶ B.4, Sept. 18, 1981.

89. A.F.R. 36-89, ¶ 1-3b, Sept. 15, 1981.

90. See generally infra text accompanying notes 184-87.

91. See generally infra notes 145-60 and accompanying text.

92. 10 U.S.C. § 101 (18) (1982).

93. Id. at § 101 (19).

94. 10 U.S.C. §§ 741, 592 (1982 & Supp. IV 1986). The first section establishes grades for regular officers, and the second for reserve officers. The second merely adopts the grades established by the first.

95. A.F.R. 35-54, atch. 1, Sept. 15, 1981.

96. See supra note 94.

97. See supra note 95.

98. 10 U.S.C. § 741 (b) (1982); A.F.R. 35-54, ¶¶ 3-7, Sept. 15, 1981.

99. 10 U.S.C. § 741 (c) (1982). The Secretary of Defense's

rules are found in Department of Defense Directive 1310.1, Oct. 15, 1981. Query whether the following applies: "an' two men ride on a horse, one must ride behind." W. Shakespeare, Much Ado About Nothing, act. 3, sc. 5, lines 40-41.

100. This has been done in AFR 35-54, Sept. 15, 1981.

101. See generally infra text accompanying notes 203-37.

102. See generally infra text accompanying notes 293-367.

103. C. Ravenstein, The Organization and Lineage of the United States Air Force xiii (1986). (The late Mr. Ravenstein's book, published by the Office of Air Force History as part of the series, "USAF Warrior Studies," is arguably the best work of its kind in existence. Before his death in 1986, Mr. Ravenstein was employed by the United States Air Force Historical Research Center.) Cf. A.F.R. 26-2, ¶ 3-1, 3-2, Jan. 6, 1982.

104. A.F.R. 26-2, ¶ 3-27a(2), Jan. 6, 1982; C. Ravenstein, supra note 103. The term, "establishment," is not defined in the DOD Dictionary.

105. A.F.R. 26-2, ¶ 3-1, Jan. 6, 1982.

106. C. Ravenstein, supra note 103, at xiv.

107. A.F.R. 26-2, ¶ 3-1, Jan. 6, 1982. C. Ravenstein, supra note 103, at xiv.

108. C. Ravenstein, supra note 103, at xiv.

109. A.F.R. 26-2, ¶ 3-2a, Jan. 6, 1982. While the unit commander is part of a group of people, and thus a member of the unit, he—unlike the other members—does not have a commander within the unit. His commander is the commander of the headquarters unit of the parent establishment. If he, himself, commands a headquarters unit,

and thus commands the parent establishment, his commander is the commander of the headquarters unit of the next higher establishment.

110. A.F.R. 26-2, ¶ 3-27a(2), Jan. 6, 1982.

111. C. Ravenstein, supra note 103, at xiii.

112. Id.

113. Id. at xiv.

114. Id.; A.F.R. 26-2, ¶ 3-1, Jan. 6, 1982. The name of the headquarters unit is always the same as the name of the establishment, except that the former additionally includes the word, "headquarters."

115. See generally C. Ravenstein, supra note 103, at 53.

116. A.F.R. 26-2, ¶¶ 2-2j, 3-20b, Jan. 6, 1985; C. Ravenstein, supra note 103, at 56.

117. A.F.R. 26-2, ¶¶ 3-13, 3-24, Jan. 6, 1982; C. Ravenstein, supra note 103, at 56-57.

118. A.F.R. 26-2, ¶¶ 3-11, 3-21, 3-2a, Jan. 6, 1982; C. Ravenstein, supra note 103, at 57-58.

119. A.F.R. 26-2, ¶¶ 3-12, 3-22, 3-2a, Jan. 6, 1982; C. Ravenstein, supra note 103, at 58.

120. A.F.R. 26-2, ¶¶ 3-10, 3-2a, Jan. 6, 1982; C. Ravenstein, supra note 103, at 54-55.

121. A.F.R. 26-2, ¶¶ 3-9, 3-25g, Jan. 6, 1982; C. Ravenstein, supra note 103, at 53-54. As a matter of interest, the Air Force Judge Advocate General School was never accorded unit status, even though it is headed by an officer called a commandant. It therefore is a named activity, not a named unit. It remains a segment of Air University's Center for Professional Development, itself a named unit of the establishment, Air University. See Air University Reg. 23-7, Jan. 2, 1987.

122. A.F.R. 26-2, ¶¶ 3-14, 3-2a, Jan. 6, 1982; C. Ravenstein, supra note 103, at 58-59.

123. C. Ravenstein, supra note 103, at 54.

124. This point was suggested by supra text accompanying notes 28-29.

125. See supra text accompanying note 108. See also Ney, supra note 45.

126. See Op. JAGAF 1983/87, Nov. 10, 1983: "'Shared' operational command is totally contrary to basic Air Force doctrine."

127. See W. Hassler, The President as Commander in Chief 9 (1971): "But, it was asked [in an early Congressional debate], could . . . three persons command the same force at the same time? The answer was flung back without hesitation: There can be but one commander; all others must be commanded." (Emphasis in original.)

128. See The Federalist No. 74 (A. Hamilton), in Great Books of the Western World 22 (1952): "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand."

129. According to General Sir John Hackett: "In Athens . . . at the beginning of the fifth century B. C., . . . there were 10 generals, selected by a show of hands in the assembly of the whole citizen body . . . . In the field, if more than one were present, each took it in turn to be commander-in-chief for a day . . . ." Hackett, "Origins of a Profession," in G. Thibault, The Art and Practice of Military Strategy 404, 406 (1984).

130. See generally A.F.M. 1-1, Mar. 16, 1984, at 2-8; Caldwell, "The Quest for Unity of Command," Air U. Rev., May-June 1984,

at 25. Query whether the following applies: "What [is] the purpose of a commanding officer if his every order [has] to be approved by a political flunky?" T. Clancy, The Hunt for Red October 189 (1984).

131. Op. JAGAF 1981/42, July 13, 1981. See also U.S. v. Gosnell, 3 C.M.R. 646 (A.F.B.R. 1952). Cf. Op JAGAF 1980/96, Nov. 14, 1980. This is not to say that command cannot be divided into functional parts, such as operational and administrative, with one part exercised by one officer and another part by another. For an illustration of how this was done in the U. S. Navy, see U.S. v. Bunting, 4 U.S.C.M.A. 84, 15 C.M.R. 84 (1954). For an illustration in the U. S. Marine Corps, see U.S. v. Kugima, 16 U.S.C.M.A. 183, 36 C.M.R. 339 (1966). The latter case makes it clear that administrative command itself cannot be shared legally. Accord Op. JAGAF 1983/87, Nov. 10, 1983. The latter opinion also suggests that operational command should not be shared for doctrinal reasons. In any case, there does not appear to be a recent example exclusively within the Air Force (and not involving a unified command) of dividing command between an administrative commander and an operational commander. (For an example involving Air Force members and a unified command, see Op. JAGAF 1980/94, Nov. 7, 1980.) In fact, the command practices approved by the United States Court of Military Appeals in the Bunting and Kugima cases have probably never occurred in the Air Force, and would probably be regarded as incredible if they did. According to the DOD Dictionary, operational command is:

Those functions of command involving the composition of subordinate forces, the assignment of tasks, the designation of objectives, and the authoritative direction necessary to accomplish the mission. Operational command should be exercised by the use of the assigned normal organizational units through their responsible commanders or through the commanders of subordinate forces established by the commander exercising operational command. It does not include such matters as administration, discipline, internal organization, and unit training, except when a subordinate commander requests assistance.

J.C.S. Pub. 1 at 258. Also according to the DOD Dictionary, administrative control is:

Direction or exercise of authority over subordinate or other organizations in respect to administrative matters such as personnel management, supply, services, and other matters not included in the operational missions of the subordinate or other organizations.

Id. at 5. Administrative command is not separately defined in the DOD Dictionary. The United States Air Force Dictionary makes a strong distinction between administrative control and administrative support. See W. Heflin, supra note 19, at 9-10.

132. This point was suggested by supra text accompanying note 54.

133. For definitions of unit and establishment, see supra text accompanying notes 101-23. For examples of military units that do not have a commander, see infra notes 168, 172.

134. See generally infra text accompanying notes 203-37.

135. See generally infra text accompanying notes 161-98.

136. See infra notes 214-17 and accompanying text.

137. Some notable incidents occurred in prisoner-of-war camps holding United States servicemen in the Vietnam War. In his book,

Admiral Stockdale describes a time when, on returning to the main compound where Admiral Denton was in command, Stockdale asked Denton to remain in command even though Stockdale was senior. He based this on his feeling that he was emotionally "out of gas" at the time. J. & S. Stockdale, In Love and War, 400 (1984). General Flynn, the senior United States prisoner of war in Vietnam, approved of this as a practice. Address by Brigadier General John P. Flynn, Air Command and Staff College, Maxwell AFB, Alabama (June 24, 1974) at 14 (unpublished text available in the United States Air Force Historical Research Center). Other prisoners of war, in their books, described cases of senior officers' refusing to take command simply because they did not want the exposure to their captors that command would bring. See, e.g., J. Dramesi, Code of Honor 192 (1975).

138. The existing Air Force regulation on command, although replete with areas needing improvement, states that officers have a responsibility to assume command in certain circumstances (A.F.R. 35-54, ¶ 9, Sept. 15, 1981), and that assumption of command is a unilateral act (id. at ¶ 10). The regulation also states that command devolves on the senior assigned eligible officer who is present for duty. Id. at ¶ 10a. While the words, "responsibility" and "unilateral," seem to imply volition, i.e., a mathematical possibility of a choice between assuming and not assuming, the word, "devolves," implies no such choice at all. In any case, even the United States Air Force Court of Military Review (and its predecessor, the Air Force Board of Review), by its decisions on other points, has implicitly recognized the proposition (or, perhaps more accurately, has unintentionally created the situation) that command does not



automatically pass to the senior assigned eligible officer who is present for duty. See, e.g., U.S. v. Miner, 23 M.J. 694 (A.F.C.M.R. 1986); U.S. v. Bierley, 23 M.J. 557 (A.F.C.M.R. 1986); U.S. v. Pazdernick, 22 M.J. 503 (A.F.C.M.R. 1986); U.S. v. Jette, 22 M.J. 803, (A.F.C.M.R. 1985); U.S. v. Avery, 30 C.M.R. 885 (A.F.B.R. 1960). Therefore, perhaps a better interpretation of "devolves" is to say not that command devolves on the senior assigned eligible officer who is present for duty, but that the duty to assume command devolves on that person. That also is more consistent with military history and more in conformance with military tradition and custom.

139. See, e.g., U.S. v. Murray, 12 U.S.C.M.A. 434, 31 C.M.R. 20 (1961); U.S. v. Williams, 6 U.S.C.M.A. 243, 19 C.M.R. 369 (1955); U.S. v. Azelton, 49 C.M.R. 163 (A.C.M.R. 1974). For the purpose of, and need for, assumption of command orders, see infra note 206.

140. For examples, see infra notes 168, 172.

141. See generally authorities cited supra note 54. That there will always—or nearly always—be a President, was ensured by the Twenty-fifth Amendment to the United States Constitution and the "Presidential Succession Act," 3 U.S.C. § 19 (1982). See generally Egeland, supra note 58, at 162-164.

142. This point was suggested by supra note 138.

143. See generally supra note 138.

144. See supra text accompanying notes 21-23.

145. This point was suggested by supra text accompanying note 30. This doctrine does not apply to aircraft commanders, a form of nonorganizational command. See infra note 307.

146. For the definition of rank, see supra text accompanying

note 93.

147. H. Scott, supra note 66, at 166 (emphasis in original).

148. See Op. JAGAF 1978/4, Jan. 11, 1978: "Subject to [law and departmental regulations to the contrary], the general rule may be stated that an organization may not legally be commanded by an officer who is junior in grade to another officer assigned to that organization who is otherwise eligible to command." This opinion adds the element of departmental regulations to Colonel Scott's positive law. The regulations prescribed by the Secretary of the Air Force "to carry out his functions, powers, and duties" [10 U.S.C. § 8013 (g) (3) (Supp. IV 1986)], will ordinarily have the force and effect of law, however. See generally 2 Am. Jur. 2d "Administrative Law" § 292 (1962). For illustrations of regulations in discrete functional areas that have been accorded the force and effect of law, see Brancato, "Base Commander Responses to Civilian Misconduct," 19 A.F. L. Rev. 111, 158, n. 297 (1977); Brancato, "Characterization in Property Tax-Exemption: What is Religion?," 44 Notre Dame Law. 60, 73-74 (1968).

149. 10 U.S.C. § 749 (a) (1982).

150. See A.F.R. 35-54, ¶ 10b, Sept. 15, 1981.

151. See authorities cited supra note 103.

152. This point was hotly debated within the Air Force from 1984 to 1986. The participants were the General Law Division of the Directorate of Civil Law, Office of The Judge Advocate General, on the one hand, and the Air Force Military Personnel Center on the other. The latter, as the office of primary responsibility over command (and over AFR 35-54, "Rank, Precedence, and Command"), took the position, in effect, that the senior eligible assigned officer (who was present for

duty) in a headquarters unit of an establishment, could command the establishment even when a subordinate unit of the establishment was commanded by an officer senior in grade to that officer. Such a rule was indeed promulgated in a 1985 change to AFR 35-54, largely in reaction to complaints from major commands that deputy base commanders at many installations were not able to succeed to command during temporary absences of the base commander. (The concern was over groups in which a subordinate unit, such as a civil engineering squadron, was commanded by a colonel, where the deputy base commander was a lieutenant colonel. Most commands desired the deputy to take command during those temporary absences to ensure that legal actions, which could be performed only by the commander, would (a) not "stack up" during an absence, and (b) be performed in a manner consistent with the base commander's policies and practices by the most knowledgeable officer. The regulatory provision in question is phrased in terms of a requirement for the officer who is assuming command to be "a member (on manpower documents) of the unit which will be commanded." A.F.R. 35-54, ¶ 10a(2), Sept. 15, 1981. This excludes officers who belong to the same establishment but are members of different manpower units. The General Law Division disagreed, holding, in effect, that all members of an establishment should be included, that is, that the requirement should be one of being a member of the establishment. This debate culminated in 1987 in the transfer of responsibility over the portion of AFR 35-54 dealing with command to the General Law Division. The author, who participated in the debate when he was on the legal staff of the Air Force Manpower and Personnel Center (now the Air Force Military Personnel Center), having recently had the opportunity to conduct extensive research and engage in deep

thought on the issue, admits error and now concurs with the position of the General Law Division. The regulation should, and doubtless will, be changed.

153. See Op. JAGAF 1985/37, Apr. 26, 1985. See also supra note 148 (Op. JAGAF 1978/4, Jan. 11, 1978.). See generally supra text accompanying notes 132-41.

154. But see cases (Bunting, Kugima) cited supra note 130. Those cases were complicated by the fact that the services in which they arose, the U. S. Navy and the U. S. Marine Corps, made a distinction, in effect, between operational command and administrative command in their service regulations. Thus, a rear admiral could exercise administrative command over an organization even when organizational command was exercised by a vice admiral. Similarly, a colonel could exercise administrative command even when organizational command was exercised by a major general (and when a brigadier general was absent). Cases such as these would be unlikely to arise in the U.S. Air Force.

155. Op. JAGAF 1978/4, Jan. 11, 1978. For a discussion of eligibility to command, see infra text accompanying notes 161-98.

156. Or, if he is not senior, he is at least serving in the highest grade held in the organization (by other eligible and present officers) and he has been appointed to command without regard to seniority. See 10 U.S.C. § 749 (a) (1982), quoted supra text accompanying note 149 and infra text accompanying note 240.

157. Or, again, by an officer appointed without regard to seniority within the highest grade. See id.

158. See, e.g., U.S. v. Bradley, 50 C.M.R. 608 (N.C.M.R. 1975); U.S. v. Azelton, 49 C.M.R. 163 (A.C.M.R. 1974). Perhaps a more

interesting question: When an absent eligible officer (who was not the commander) is senior in grade to the officer taking command, who is the absent officer's commander? This question was framed, but never raised, in the Kugima case, cited and discussed supra notes 131, 154. (At issue were not only an absent commander in the grade of major general and a present colonel, but also an absent "assistant commander" in the grade of brigadier general and the present colonel.) A second question: When an absent eligible officer (who was not the commander) is equal in grade but senior in rank to the officer taking command, who is the absent officer's commander? This question was framed, but never raised, in U.S. v. Avery, 30 C.M.R. 885 (A.F.B.R. 1960). (At issue were two lieutenant colonels. The senior commanded a squadron, and the junior took command of the parent group when both the senior and the regularly assigned commander—a colonel—were absent.) A third question: When an absent eligible officer who is senior in grade or rank returns to duty in the organization, but does not take command—whether because of a declination to assume command or an ineffectual assumption procedurally, who is the newly returned officer's commander? This question was framed, but never raised, in the Avery case as well, and in U.S. v. Bierley, 23 M.J. 557 (A.F.C.M.R. 1986); U.S. v. Pazdernik, 22 M.J. 503 (A.F.C.M.R. 1986); and U.S. v. Jette, 22 M.J. 803 (A.F.C.M.R. 1985). It was both framed and raised, but not resolved, in the dissenting opinion of Lewis, J., in U.S. v. Miner, 23 M.J. 694 (A.F.C.M.R. 1986). A fourth and most critical question: Assume the same facts as in the third question, does the returned officer's presence divest the junior from organizational command? This question was framed, but never raised, in the cases cited with the

third question. There are no easy answers. However, on the basis that a junior may not command a senior, except when they both serve in the same grade and one has been appointed without regard to seniority, it would appear that the absent senior can never be under the command of the junior who takes command by an assumption, and that only an absent senior who is equal in grade to the junior can be under the command of the junior who took command by an appointment without regard to seniority. It would appear that command of an absent or returned senior, who thus has no commander in the unit, is by the commander of the parent establishment. To the last question, the answer is clearly yes when the senior is senior in grade (see supra text accompanying note 153; see also supra note 148), and probably yes when the senior is equal in grade and the junior has not been appointed without regard to seniority. These questions should be resolved in AFR 35-54.

159. Cf. U.S. v. Gionet, 41 C.M.R. 519 (A.C.M.R. 1969); U.S. v. Petro, 16 C.M.R. 302 (A.B.R. 1954).

160. See infra note 216 and accompanying text.

161. This point was suggested by supra text accompanying notes 33-35.

162. See generally Exton & Wiener, "What is a General?," Army, Jan. 1958, at 37.

163. See supra text accompanying note 60.

164. See supra text accompanying notes 66-90.

165. A former statute on this subject was entitled, "Command: female members if Air Force." It provided: "The Secretary of the Air Force shall prescribe the military authority that female members of the Air Force . . . may exercise." 10 U.S.C. § 8580 (1964) (repealed Nov.

8, 1967). This statute, or one like it, had been effect since the creation of the U. S. Air Force in 1947. It was the foundation of an Air Force rule that essentially restricted command by female members to units consisting entirely of women. After the statute was repealed in 1967, the Air Force abolished the rule in 1968. Neither the statute nor the rule was ever replaced. Thereafter, the only restrictions on command by women were indirect ones that flowed from policies that affected women generally. For example, if the commander was required to possess a certain aeronautical rating, the fact that there were no women possessing (or allowed to possess) that rating amounted to an indirect restriction on command by women. (A more current example: if women cannot belong to "Red Horse" squadrons, then women are indirectly restricted from commanding "Red Horse" squadrons. See supra text accompanying note 76.) See generally "WAF Could Command Base," A.F. Times, Sept. 3, 1969, at 5, col 1; "More Women Assuming Command," A.F. Times, Sept. 11, 1974, at 47, col. 1.

166. A former statute that affected navigators, without mentioning them, provided: "Flying units shall be commanded by commissioned officers of the Air Force who have received aeronautical ratings as pilots of service types of aircraft." 10 U.S.C. § 8577 (1970) (repealed Dec. 18, 1974) (emphasis added). This statute, or one like it, had been in effect since 1920. When it was repealed in 1974, the Air Force changed the corresponding regulatory provision to require only a currently effective aeronautical rating and status as a "Line of the Air Force" officer, as far as commanding flying units is concerned. Consequently, this removed any restrictions on navigators. For a step-by-step account of the struggle by navigators to remove the

restriction, see the following: "Pilots vs. Navigators: Roles Won't Change," A.F. Times, Nov. 1, 1972, at 13, col. 1; "Chances at Command Greatest for Pilots," A.F. Times, Dec. 6, 1972, at 10, col. 1; "Law Limits Commands," A.F. Times, June 6, 1973, at 1, col. 1; "Command Sought for Navigators," A.F. Times, Feb. 20, 1974, at 1, col. 2; "Command Decision," A.F. Times, June 12, 1974, at 1, col. 2; "Senate Okays Bill to Widen Command Door," A.F. Times, Sept. 11, 1974, at 4, col. 4; "Navigators Near Command Role," A.F. Times, Sept. 25, 1974, at 4, col. 4; "Nav-Command Bill Passes House," A.F. Times, Dec. 25, 1974, at 2, col. 1. For an account of the successful and earlier quest for command by naval flight officers (the equivalent of a navigator in the Air Force), and citations to other sources on the effort in the Air Force, see Richardson, "Navigators in Command: A Naval Perspective," Air U. Rev., Jan.-Feb. 1978, at 56.

167. See A.F.R. 35-54, ¶ 11g, Sept. 15, 1981. In its early history, the Air Force mostly used pilots to command its units of whatever type. Nonetheless, in its earliest broad-based regulation on command (which superseded the first actual regulation on command—AFR 55-1, Jul. 22, 1948—which, in turn, covered only command of flying units), the Air Force restated the long-standing ban on command of flying units by anyone other than pilots (widely defining flying units to include bases that have aircraft, as well as tactical units that have aircraft) and then provided that there should be "the broadest possible opportunity" for officers without an aeronautical rating to command nonflying units such as depots, schools, training centers, and communications units. A.F.R. 55-1, ¶¶ 2, 3, Jan. 12, 1949. This regulation was superseded by the first AFR 35-54 in 1951. In a 1953



change to that regulation, the rule on command of "hybrid" units was stated for the first time. Such units were ones in which "the employment of aircraft is a corollary or support function to the primary mission," such as air base groups and units "where the primary mission is not the exploitation of the piloted Air Force weapon systems." Under the 1953 change, those units were to be commanded by officers holding an aeronautical rating or by other officers, with priority in selection to the former. A.F.R. 35-54B, ¶ 20, Nov. 13, 1953. (For the present rule on "hybrid" units, see infra note 196.) In 1957, the Air Force removed all restrictions on officers who do not possess an aeronautical rating from commanding a unit that uses only missiles as its primary weapons system. See generally "Command of Certain Missile Units by Non-Rated Officers Approved," A.F. Times, June 8, 1957, at 15, col. 1.

168. See supra notes 54-56. There is a difference between civilian command and the constitutional doctrine of civilian control. The President is the only civilian expressly given command by any source of law. Because he is a civilian, this means that there is civilian control. Because Congress has authorized civilian agents of the President, like either or both the Secretary of Defense and the secretaries of the military departments, to exercise supervision and authority over all military commanders, civilian control is enhanced. Because these agents exercise such control, they have more legal authority, i.e., more legitimate power, than any military commander. However, this does not mean that they are commanders themselves. Note that some Air Force units are headed by civilians, and not commanders. In such a case, the civilian is usually called something other than commander. See, e.g., Air University Reg. 23-10, "Air University

Library," Nov. 27, 1984 [Air University Library (AUL) is a named unit under AFR 26-2, and is headed, usually, by a civilian employee with the title, "Director, AUL."] If units such as these have military members assigned, as does AUL, the commander of those members is the commander of the parent establishment. See supra text accompanying notes 140-141.

169. U.C.M.J., art. 1 (3). Because this is found in the article that establishes definitions for purposes of the Uniform Code, this definition obviously is mandatory, by its own force, only for military justice purposes. For an example of an implementation of this definition in the area of nonjudicial punishment, see A.F.R. 111-9, ¶ 3a, Sept. 12, 1984. If the commander has no authority under the Uniform Code, he is left only with the other element of command, responsibility. Arguably, responsibility without authority is not command. See supra text accompanying note 20.

170. See supra note 149 and accompanying text.

171. See A.F.R. 35-54, ¶ 9, Sept. 15, 1981: "Enlisted members may not exercise command." This does not mean that the Air Force prohibits enlisted members from doing some things that are usually done only by commanders. See, e.g., A.F.R. 39-29, table 1, note 1, Jan. 3, 1984 ("Senior NCOs are authorized to exercise promotion authority when they are appointed as an Enlisted Detachment Chief when there is no commander on station."); A.F.R. 35-99, ¶ 1-4e(2), May 6, 1983 ("A senior . . . NCO . . . may perform the duties of a commander [for purposes of the Personnel Reliability Program], in units to which a commissioned officer is not assigned. . . . NOTE: [This] does not make an NCO the commander in the legal sense for other purposes.") Cf. Op. JAGAF 1978/52, May 5, 1978.

172. See, e.g., Air University Reg. 23-11, "USAF Senior NCO Academy," Nov. 4, 1986 (The United States Air Force Senior Noncommissioned Officer Academy [USAFSNCOA] is a named unit under AFR 26-2, and is headed by the Commandant, USAFSNCOA. As a practice, the commandant usually is an enlisted person.) There are other examples in the major command NCO academies—some of which are organizations (named units) and some of which are mere supervision structures (named activities)—and elsewhere. Like the case of the Air University Library (see supra note 168), the military members in the USAFSNCOA and these other units will find their immediate commander in the parent establishment. See supra text accompanying notes 140-41.

173. It cannot be otherwise in view of the clear language in the governing regulation on command. See supra note 171.

174. Exec. Order No. 10631, 3 C.F.R. 266 (1954-58), as amended by Exec. Order No. 12017, 42 Fed. Reg. 57941 (1977), 3 C.F.R. 152 (1978), [hereinafter on occasion referred to as the Code of Conduct].

175. The Code of Conduct provides in Article IV, inter alia: "If I am senior, I will take command." This provision potentially conflicts with G.P.W., supra note 77. Article 79 of the latter creates the position of "prisoner of war representative," which is roughly equivalent to the commander who is contemplated by the Code of Conduct. However, Article 79 specifies, in effect, that the senior prisoner is the prisoner of war representative only if he is an officer. If he is an enlisted person, i.e., there are no officer prisoners in the camp, the prisoner of war representative shall be elected, according to Article 79, by secret ballot for six-month terms. The Department of Defense has sought to resolve this conflict in the following way:

The senior person (whether officer or enlisted) within the PW camp or with a group of PWs shall assume command according to rank without [regard] to Service.

D.O.D. Dir. 1300.7, encl. 2, ¶ B.4.a.(4), Dec. 19, 1984 (attached to A.F.R. 50-3, Apr. 25, 1986).

The Geneva Conventions . . . provide additional guidance to the effect that in . . . camps containing enlisted personnel only, [the] prisoner's representative will be elected. . . . [S]uch a representative is regarded by U. S. policy as only [a] spokesman for the senior military person. The prisoner's representative does not have command, unless the [prisoners] elect . . . the senior military person. The senior military person shall assume and retain actual command, covertly if necessary.

Id. at encl. 2, ¶ B.4.a.(6). See also A.F.P. 35-19, "Prisoner of War: Rights & Obligations Under the Geneva Convention," Mar. 1, 1980, at 7; A.F.P. 34-10, "Code of the U. S. Fighting Force," 1979, at 10.

176. See D.O.D. Dir. 1300.7, supra note 175, at encl. 2, ¶ B.4.a.(4). AFR 35-54 (see supra note 171) should be changed to be consistent. There are other exceptions to the general rule, but they are not as important. See infra text accompanying notes 316-18.

177. 10 U.S.C. § 8581 (1982): "An officer designated as a chaplain has rank without command." See also A.F.R. 35-54, ¶ 11a, Sept. 15, 1981 ("Chaplains may not exercise command."); D.O.D. Dir. 1300.7, supra note 175, at encl. 2, ¶ C.4 (Chaplains do not command in a prisoner of war camp--but it is not stated whether this is because they are chaplains or because they cannot be considered as prisoners.).

178. See generally supra notes 77, 79-80 and accompanying text. Query what came first for chaplains, noncombatant status or ineligibility to command.

179. The statute, which can be traced back to the War of Rebellion, uses the Hohfeldian term, "no right": "A retired officer has no right to command except when on active duty." 10 U.S.C. § 750 (1982). For the law on recalling retirees to active duty, see 10 U.S.C. §§ 688 (a), 675, 672 (a) (1982 & Supp. IV 1986). See also U.C.M.J., art. 2 (d).

180. A.F.R. 35-54, ¶ 11c. Sept. 15, 1981. See also D.O.D. Dir. 1300.7, supra note 175, at encl. 2, ¶ C.4 ("Medical personnel" do not command "nonmedical personnel" in a prisoner of war camp—but it is not stated whether this is because they cannot be considered as prisoners.).

181. See 10 U.S.C. § 8579 (1982): "An officer designated as a medical, dental, veterinary, medical service, or biomedical sciences officer or as a nurse is not entitled to exercise command because of rank, except within the categories prescribed in subsection (a), (b), (c), (d), (e), (f), or (i), of section 8067 of this title, or over persons placed under his charge." (Emphasis added.) Section 8067 establishes categories of professional functions that are performed only by officers who are formally designated to perform them under departmental regulations. Subsection "(a)" pertains to medical officers [defined at 10 U.S.C. § 101 (38) (1982)], subsection "(b)" to dental officers [defined at 10 U.S.C. § 101 (39) (1982)], subsection "(c)" to veterinary officers, subsection "(d)" to medical service officers, subsection "(e)" to nurses, subsection "(f)" to biomedical sciences officers, and subsection "(i)" to other categories of officers established by the service secretary for officers whose duties require "specialized training or experience." (Subsection "(g)" pertains to

judge advocates and subsection "(h)" to chaplains.)

182. There are three features of Section 8579 that could lead to confusion. First, it encompasses all professional categories established by Section 8067, except judge advocates and chaplains. This means, for example, that—contrary to what probably is a common belief—there is no statutory ban against a nurse's commanding a physician. Second, it is not clear what "persons placed under his charge" means, other than that this obviously means persons in non-excepted categories. Perhaps this includes patients and administrative support personnel. Third, it is not clear whether the statute prohibits—relative to nonexcepted categories—all command, or just command "because of rank." In this regard, it also is not clear just exactly what "command because of rank" is, but one can surmise that it might be command based on seniority rather than command based on the appointment statute. See generally supra note 149 and accompanying text. (Appointments without regard to seniority are based partially on rank, however, in that the person appointed must have the rank of the highest grade held by eligible and present officers in the organization.) The Judge Advocate General of the Air Force has taken the position that the statute only prohibits command "because of rank" outside of the excepted areas, and that this therefore means that it is permissible to appoint medical officers to positions of nonexcepted command when the appointment will also result in a promotion in grade. Op. JAGAF 1980/75, July 28, 1980. Apparently, the reasoning was that such a medical officer would not then command the nonexcepted area because of his rank as a medical officer, but because of his newly acquired rank in a higher grade. Aside from the question of whether

the new rank comes from the new command, or the new command from the new rank, this opinion may or may not be consistent with the intent of the statute, which is unclear. The statute is the last in a near identical line of statutes going back to 1847. In that year, it provided: "[T]he medical officers shall not in virtue of such rank be entitled to command in the line or staff departments of the army." Act of Feb. 11, 1847, ch. 8, § 8, 9 Stat. 125.

183. It is possible to prohibit a person, who is otherwise eligible and qualified to assume command, from assuming command. See infra text accompanying notes 218-19.

184. See generally supra text accompanying note 89.

185. Op. JAGAF 1984/30, May 15, 1984. Query whether a legal opinion can have a legally binding effect, i.e., would of itself invalidate command by a judge advocate who took command without getting prior approval, or would by itself constitute a basis for alleging a violation of Article 92 of the Uniform Code against such a judge advocate.

186. A.F.R. 110-1, ¶ 6. Aug. 7, 1986:

Prohibition on Duty Assignments for Judge Advocates. The officer strength of [The Judge Advocate General's Department] is adequate for performing its mission only when its members are assigned appropriate duties. Judge advocates must not be assigned additional duties which interfere or conflict with their duties as judge advocates. On occasion, the mission needs of a unit may indicate that a judge advocate should be appointed to a position of command. However, such appointments are clearly the exception, and no judge advocate will be so appointed without the prior approval of The Judge Advocate General. In addition, such appointments are subject to AFR 35-54.

See also A.F.R. 35-54, ¶ 11b, Sept. 15, 1981.

187. See id. Note that the regulation speaks only in terms of taking command by appointment. No mention is made of taking command by assumption. This is probably attributable to the facts that the regulation is based on the opinion (see supra note 185) and, at the time of the opinion, AFR 35-54 provided that only officers in the Line of the Air Force promotion competitive category could succeed to command of nonmedical units by the assumption method. However, the latter limitation was removed from AFR 35-54 in 1985. Therefore, technically, a judge advocate could assume command of an organization, without prior approval, without violating AFR 110-1.

188. A.F.R. 35-54, ¶ 11d, Sept. 15, 1981.

189. A.F.R. 35-54B, ¶ 20c, Nov. 13, 1953 (superseded).

190. A.F.R. 35-54, ¶ 11e, Sept. 15, 1981.

191. A.F.R. 23-1, ¶ 1c, Jan. 22, 1986.

192. Extended active duty means a term of active duty for more than 90 days. A.F.M. 11-1, vol. 1, Jan. 1, 1976, at 16.

193. The active-duty list is a list of all officers other than officers described in Section 641 of Title 10, United States Code. 10 U.S.C. ¶¶ 101 (37), 620 (1982). Section 641 describes, inter alia, officers (a) on active duty for training; (b) on active duty pursuant to a "statutory tour"; (c) on active duty "in connection with organizing, administering, recruiting, instructing, or training the reserve components"; (d) on active duty for full-time National Guard duty; and (e) who are permanent professors at the United States Air Force Academy. 10 U.S.C. § 641 (Supp. IV 1986). The length of active duty does not matter under Section 641. Therefore, some reserve officers are on active duty for years at a time without ever being on



the active-duty list. Other terms not to be confused with "active-duty list" are "active duty" [see 10 U.S.C. § 101 (22) (Supp. IV 1986)], "active service" [see id. at § 101 (24)], and "active status" [see 10 U.S.C. § 101 (25) (1982)]. Each is different.

194. See supra note 166.

195. A.F.R. 35-54, ¶ 11f, Sept. 15, 1981:

Only Line of the Air Force officers command flying units and organizations having clearance authority for manned aircraft. These officers must hold a currently effective aeronautical rating and must be qualified for aviation service in the currently effective aeronautical rating.

The eligibility rule for aircraft commanders is not prescribed in AFR 35-54. See infra note 307.

196. See A.F.R. 35-54, ¶ 11f(a), Sept. 15, 1981:

Flying units are defined as units whose primary mission is flying manned aircraft or planning for and directing the employment of manned aircraft.

See also id. at ¶ 11f(b):

Certain types of organizations, such as air base wings or groups, have multiple missions which include responsibility for controlling and directing flying activities, or clearing aircraft for flight. Such organizations may be considered nonflying units; therefore, they may be commanded by nonrated officers provided that: (1) Responsibility for the flying portion of the mission has been assigned to the commander of a subordinate flying unit (such as a base operations squadron) or to a director of operations and training. If this authority is vested in a director of operations and training, he or she must be a pilot or navigator in an active flying status and this authority must be delegated by special orders. (2) Clearance authority has been delegated under AFR 60-16.

197. See generally supra text accompanying note 89.

198. A.F.R. 35-54, ¶ 11c, Sept. 15, 1981. See also supra notes 180-83 and accompanying text. There is no guidance in AFR 35-54 on how to identify such an organization with specificity.

199. This presupposes that the organization or function has a commander at the time of the changeover. It may be one of those organizations without a commander. See generally supra note 140 and accompanying text. Or, the commander may die before he is succeeded. For excellent presentations of some of the leadership challenges faced by new commanders, irrespective of the method used in taking command, see Coye, "Change of Command: Leader Succession in the Military Organization," Air U. Rev., May-June 1985, at 41; Olmstead, "Assumption of Command," Mil. Rev., Feb. 1964, at 4.

200. The only way this could happen is by an appointment, with at least an informal attachment to the organization for full-time or part-time duty. See also infra note 243 and accompanying text. Arguably, attachment can be implied from the appointment.

201. See infra note 215. He can be appointed to command, however. See also infra note 243.

202. Prisoner of war command is an example. See supra note 175. See generally infra text accompanying notes 310-312. It is arguable that some types of nonorganizational commanders are automatically appointed by the guiding regulation. See, e.g., infra text accompanying notes 316-17 (air troop commanders), and text accompanying note 318 (shelter commanders).

203. A.F.R. 35-54, ¶ 10, Sept. 15, 1971.

204. See supra notes 137-39 and accompanying text.

205. See generally A.F.R. 10-7, ¶¶ 2-1 - 2-3, Sept. 15, 1986.

206. See Op. JAGAF 1981/44, July 23, 1981: "The Air Force has elected to publish assumption of command orders for reasons of policy, not of law." The publication of an order is not necessary in all cases of command succession, although it certainly is desirable, for record keeping purposes if nothing else. While an order may at one extreme constitute the act of assuming command, it may be mere evidence of an assumption at the other extreme. Cf. A.F.R. 35-54, ¶ 10, Sept. 15, 1981; Op. JAGAF 1976/46, July 8, 1976.

207. See A.F.R. 35-54, ¶ 10c, Sept. 15, 1981.

208. Id.

209. See supra note 205. Although the formats do not include examples of retroactive and prospective assumptions, there is no reason the orders cannot be tailored to account for effective dates different than the dates the orders are published. Also, it makes little difference whether the order is signed by the officer who is assuming command, or by another official. In effect, the other official would merely be attesting to the fact that the named officer assumed command, or that the other official had some evidence of this (such as a request from the named officer to publish the order).

210. A.F.R. 35-54, ¶ 10c, Sept. 15, 1981.

211. See supra notes 124-31 and accompanying text.

212. See A.F.R. 35-54, ¶ 18a, Sept. 15, 1981. See also A.F.R. 10-1, ¶ 3-4b(6), Mar. 29, 1985; A.F.R. 12-17, ¶ 2a, Jan. 15, 1973.

213. See A.F.R. 10-1, ¶ 3-4b(5), Mar. 29, 1985. See, e.g., A.F.R. 111-1, ¶ 1-1, Aug. 1, 1984 (acting staff judge advocate).

214. A.F.R. 35-54, ¶ 10a(1), Sept. 15, 1981. See supra notes

161-98 and accompanying text.

215. A.F.R. 35-54, ¶ 10a(2), Sept. 15, 1981. The regulation speaks in terms of being a member of the "unit." A better way to state the requirement would be to use the term, "organization," i.e., the requirement is to be a member (in the manning sense) of the organization. An organization can be either an establishment or a unit. In this fashion, an officer not assigned to the headquarters unit of an establishment can "reach up" to command the establishment itself, as long as he otherwise satisfies the requirements for command and, of course, belongs to the establishment, i.e., to the organization. See generally supra note 152. In any case, an officer who has not "signed out" of his losing unit can hardly be a member of his gaining unit.

216. A.F.R. 35-54, ¶ 10a(3), Sept. 15, 1981. See generally supra notes 157-160 and accompanying text. Query whether an organization can qualify the second ranking (and eligible and present) officer for command by sending the senior ranking (and eligible) officer elsewhere on temporary duty or, with the latter's consent, on voluntary leave. There appears to be no reason this cannot be done, although this may not be an appropriate motive for authorizing temporary duty, even if there is a legitimate purpose for the temporary duty.

217. A.F.R. 35-54, ¶ 10a(4), Sept. 15, 1981. See generally supra notes 145-54 and accompanying text. If the officer is equal in grade but not senior in rank to the senior ranking officer who is present and eligible, he can take command only by an appointment. See infra notes 238-65 and accompanying text.

218. Such orders would appear to be lawful. They have been used, for example, to prevent nurses from taking command of hospitals.

219. This would not be the case if another officer was appointed without regard to seniority, if both were present at the time of the appointment and at the time of the purported assumption. Otherwise, the appointment statute would be meaningless. In all other cases, such an assumption doubtless would be valid because assumptions are unilateral acts, and obeying an order to refrain from acting unilaterally is not one of the requirements for performing the unilateral act.

220. In these cases, arrangements are invariably made by higher authority for (a) an officer in the organization to assume command permanently--whether for a short period pending the arrival of a new commander, or for an indefinite period; (b) an officer in the organization to be appointed to command; (c) an outside officer to be assigned to the organization so he can assume command; or (d) an outside officer to be appointed to command, either with a concomitant assignment to the organization of a mere informal attachment to the organization for full-time or part-time duty.

221. An officer is still an officer even while on leave. In this connection, being in the execution of one's office is not an element of Article 89 of the Uniform Code (disrespect toward a superior commissioned officer), Article 90 (2) (willful disobedience of a superior commissioned officer), or Article 92 (2) (failure to obey a lawful order). It is an offense element of Article 90 (1) (assaulting a superior commissioned officer), but "the commanding officer of a unit in the field is generally considered to be on duty at all times."

M.C.M., part IV, ¶ 14c(1)(b). As to temporary duty, there formally was a rule that prohibited an officer from assuming command when the regularly assigned commander was absent in a temporary duty status, "except under unusual circumstances." A.F.R. 35-54, ¶ 18a, Sept. 15, 1981 (deleted in 1985). Apparently, this rule was based on a principle developed in the U.S. Army which was designed to preserve the validity of court-martial convening orders and actions that were issued and dated during the convening authority's absence on temporary duty. The Army principle simply stood for the proposition that a commander may retain his command when he is absent from it on official business. See U.S. v. Petro, 16 C.M.R. 302 (A.B.R. 1954). However, in the Air Force, this principle evolved into a flat prohibition against another's assuming command under these circumstances, except when exigencies dictated otherwise. Yet, some temporary absences were long or untimely, and the affected organizations needed a present commander dearly. It really did not make any difference to those who were left behind as to why the commander was absent. The options were to do nothing, appoint a new commander, or change commanders by an assumption. Frequently, the latter was chosen out of sheer ignorance of the risk. The risk was that the United States Air Force Court of Military Review or some other reviewing authority might nullify the assuming commander's court-martial decisions. See, e.g., U.S. v. Guidry, 19 M.J. 984 (A.F.C.M.R. 1985). (This was partly attributable to unwary trial counsel, who were not usually sophisticated in matters of command succession, and who therefore did not realize that they should show exigent circumstances on the record.) Because of this, and especially considering that it made little difference to the needs of the organization whether the

commander was absent on temporary duty or on leave—he was absent either way, the Air Force dropped the "temporary duty" rule in 1985.

222. These are called "positions of importance and responsibility" and involve officers in the grades of general and lieutenant general (or their equivalents). See 10 U.S.C. § 601 (1982 & Supp. IV 1986). Officers serving in those positions hold the permanent grade of brigadier general or major general (or their equivalent), and enjoy the higher grade only (a) while in the position; (b) while being transferred from one such position to another; (c) for not more than 180 days while hospitalized; or (d) for not more than 90 days while awaiting retirement. Id. Therefore, if any such position is that of a commander, an assumption of command by another during the incumbent's absence would divest the incumbent of the position and thus cause him to lose the higher grade. The natural and probable inference, therefore, is that Congress did not intend for these command positions to be subject to routine command successions. Accordingly, the applicable regulation, in effect, instructs the next senior officer in the organization not to take command unless so directed by proper authority. A.F.R. 35-54, ¶ 18e, Sept. 15, 1981. See generally Op. JAGAF 1982/25, May 28, 1982. An officer who assumes command in a position of importance and responsibility, without assignment by the President with the advice and consent of the Senate, does not obtain the higher grade. See 10 U.S.C. § 601 (a) (1982). See also Op. JAGAF 1980/96, Nov. 14, 1980.

223. Squadron commanders are probably the immediate commander of more people than commanders at any other level. Group commanders

frequently are special court-martial convening authorities. Other responsibilities flow from convening authority status, such as serving as a discharge authority and demotion authority for enlisted members under AFR 39-10 and AFR 39-30, respectively.

224. Every commander at every level is the immediate commander of someone.

225. A.F.R. 35-54, ¶ 18a, Sept. 15, 1981 (emphasis added).

226. Id. at ¶ 18b.

227. 11 M.J. 373 (C.M.A. 1981).

228. Id. at 380.

229. Typical decisions of a convening authority include convening a court-martial, referring charges to a court-martial, and acting on the record of a court-martial. The convening authority (other than the Secretary of the Air Force) must be a commander. See R.C.M. 504 (b) (1) (Discussion).

230. See U.S. v. Bompastore, No. ACM S26521 (A.F.C.M.R., Jan. 16, 1985); U.S. v. Guidry, 19 M.J. 984 (A.F.C.M.R. 1985); U.S. v. Jette, 22 M.J. 803 (A.F.C.M.R. 1985); U.S. v. Pazdernik, 22 M.J. 503 (A.F.C.M.R. 1986); U.S. v. Bierley, 23 M.J. 557 (A.F.C.M.R. 1986); U.S. v. Miner, 23 M.J. 694 (A.F.C.M.R. 1986).

231. 23 M.J. 694 (A.F.C.M.R. 1986).

232. All the opinions but one were written by the same judge.

233. See supra text accompanying notes 225-26.

234. E.g., ¶ 10c: "When the regularly assigned commander is absent only temporarily and then returns after another officer has been appointed, he or she is revested with command only if he or she actually assumes command, or is appointed to command." (Emphasis



added.) It should also be noted that the requirements for assumptions, as listed in AFR 35-54, do not include the prolonged absence of the incumbent. See A.F.R. 35-54, ¶ 10a, Sept. 14, 1981.

235. The majority was also confused over the use of the word, "permanent," in AFR 35-54, as in permanent appointments, and cast this up in support of reading "prolonged absence" as a requirement for terminating a permanent appointment by a mere assumption. 23 M.J. 694, 697. In this regard, it is necessary to distinguish temporary and permanent actions from temporary and permanent absences. The title of the regulatory provision speaks in terms of actions. A.F.R. 35-54, ¶ 10c, Sept. 15, 1981. See supra text accompanying notes 207-08. See also infra text accompanying note 257. The prolonged absence clause was added to AFR 35-54 in 1985. According to one editor, "the drafters of [the 1985 addition] were obviously motivated by the need to provide a more flexible framework for the assignment/assumption of command." AFJAG Rep. (No. 4, 1985) at 13.

236. For one other compelling question, see supra note 158 (fourth question): How can B command anybody in the organization if he cannot command everybody who is present? See also supra note 148 (Op. JAGAF 1978/4, Jan. 11, 1978).

237. See generally U.C.M.J., art. 67 (b) (2). The companion cases are U.S. v. Bierley, 23 M.J. 557 (A.F.C.M.R. 1986) and U.S. v. Pazdernik, 22 M.J. 503 (A.F.C.M.R. 1986). Earlier, based on the companion cases, the Office of The Judge Advocate General advised major command staff judge advocates to consider changing convening authorities by the appointment method alone, until "further guidance is available." See HQ USAF/JAJ Letter to "All MAJCOM SJAs,"

"Appointments/Assumptions of Command, Dec. 26, 1985. See also HQ USAF/JAJM Message to AIG 9337/9338, 061340Z MAY 86, "Recent AFMR decision Interprets AFR 35-54."

238. See A.F.R. 35-54, ¶ 10b, Sept. 15, 1981.

239. There is nothing in AFR 35-54 that covers other appointments, although there is in the regulation dealing with orders. See A.F.R. 10-7, ¶ 2-3b. Sept. 15, 1986. There is ample recognition of such appointments elsewhere, however. See, e.g., Op. JAGAF 1983/54, July 13, 1983; Op. JAGAF 1978/62, June 6, 1978.

240. 10 U.S.C. § 749 (a) (1982).

241. See opinions cited supra note 239. The appointment order itself probably amounts to an attachment for duty.

242. See e.g., supra note 237.

243. Or, who will be assigned to the organization in the manning sense, but is not at the time he takes command.

244. See infra text accompanying notes 324-45.

245. See 10 U.S.C. § 601 (a) (1982). See generally supra note 222.

246. If the "other" appointment is to a "position of importance and responsibility," the appointing authority is the President, "by and with the advice and consent of the Senate." 10 U.S.C. § 601 (a) (1982).

247. For two notable exceptions, see General MacArthur's appointment of Lieutenant General Robert Eichelberger to command the 32d Division, and President Lincoln's appointment of Major General Joseph Hooker to command the Army of the Potomac. In the former, MacArthur told Eichelberger, "Bob, I'm putting you in command at

Buna. . . . I want you to take Buna, or not come back alive." J.

Lurvaas, Dear Miss Em 32 (1972). In the latter, Lincoln sent Hooker the following letter, which is one of the great pieces of American military literature:

I have placed you at the head of the Army of the Potomac. Of course I have done this upon what appears to me to be sufficient reason, and yet I think it best for you to know that there are some things in regard to which I am not quite satisfied with you.

I believe you to be a brave and skillful soldier, which, of course, I like. I also believe you do not mix politics with your profession, in which you are right. You have confidence in yourself, which is a valuable, if not indispensable quality. You are ambitious, which, within reasonable bounds does good rather than harm; I think that during General Burnside's command of the Army you have taken counsel of you ambition and thwarted him as much as you could, in which you did a great wrong to the country and to a most meritorious and honorable brother officer. I have heard, in such a way as to believe it, of your recently saying that both the Army and the Government needed a dictator. Of course it was not for this, but in spite of it, that I have given you the command. Only those generals who gain successes can set up as dictators. What I now ask of you is military success, and I will risk the dictatorship.

The Government will support you to the utmost of its ability, which is neither more nor less than it has done and will do for all commanders. I much fear that the spirit which you have decided to infuse into the Army of criticizing their commander and withholding confidence from him will now turn upon you. I shall assist you as far as I can to put it down. Neither you nor Napoleon, if he were alive again, could get any good out of an Army while such a spirit prevails in it; and now beware of rashness. Beware of rashness, but with energy and sleepless vigilance, go forward and give us victories.

Quoted in B. H. Liddell Hart, The Sword and the Pen 191-92 (1976). See also 9 The Annals of America 401-02 (1968). For a presentation of important considerations in selecting commanders, see Flake, "Selection and Training of Commanders, Air U. Rev., Nov.-Dec. 1965, at 10.

248. See Act of June 4, 1920, ch. 227, subch. 2, § 1, 41 Stat. 11.

249. The doctrine was articulated as early as 1855 by Attorney General Caleb Cushing. See 7 Op. Att'y Gen. 453 (1855). Subsequently, it was incorporated in a statute series that authorizes the President to expressly delegate delegable functions within the executive branch, and which provides that express delegations should be published in the Federal Register. 10 U.S.C. §§301-03 (1982). One of these statutes states the "alter ego doctrine":

This chapter shall not be deemed to limit or derogate from any existing or inherent right of the President to delegate the performance of functions vested in him by law, and nothing herein shall be deemed to require express authorization in any case in which such an official [who receives a "nonexpress" delegation] would be presumed in law to have acted by authority of the President.

10 U.S.C. § 302 (1982) (emphasis added).

250. A.F.R. 35-54, ¶ 10b, Sept. 15, 1981. The redelegation also extends to some staff officers at the Air Staff and in the Secretary's office, presumably for units under their control. For example, the Air Force Military Personnel Center is under the control of the Air Staff's Deputy Chief of Staff for Personnel.

251. AFR 35-54 is not clear on whether "units of their command" includes only those units in the establishment which is commanded by the appointing authority, or also those units in

subordinate establishments as well. In other words, can a numbered air force commander appoint only the commanders of the division headquarters units, or also the commanders of the wing headquarters units in wings that are in division establishments? The Air Force follows the latter as a practice.

252. In 1983, a lieutenant colonel belonging to a reserve flying group applied to the Air Force Board for Correction of Military Records asking that his records be corrected to show that he was then the commander of the group. He established that he was the senior ranking officer in the group, and that another lieutenant colonel was appointed to command without regard to seniority by the commander of the reserve division to which the group belonged. The applicant, although a pilot in the Air Force Reserve, was a lawyer in civilian life. In his application, he alleged that the division commander did not have the authority to make an appointment without regard to seniority because the Secretary of the Air Force was never himself delegated any appointment authority by the President. The applicant stated that he checked for an executive order, but did not find any. His position was that the appointment statute gave the President appointment authority, and the Secretary gave the division commander appointment authority, but that there was a "missing link" between the President and the Secretary. In preparing an advisory opinion for the correction board, Air Force judge advocates at the Air Force Manpower and Personnel Center (now the Air Force Military Personnel Center) verified that there was no executive order on point, and then traced the Secretarial redelegation back to the first version of AFR 35-54, which was published in 1951. On the first page of that regulation, it was stated

that AFR 35-54 was based on two U.S. Army regulations. In checking with judge advocates on the Army Staff, the Air Force judge advocates learned about the "alter ego doctrine" and were provided an excellent opinion on the subject that states the doctrine, cites supporting court decisions, and analyzes the advantages and disadvantages of express delegations on the one hand, and of reliance on the "alter ego doctrine" on the other. See Op. JAGA 1978/2207, May 24, 1978.

253. See HQ USAF/JAJ Letter to "All MAJCOM SJAs," "Appointments/Assumptions of Command," Dec. 26, 1985, at ¶ 2.

254. See infra text accompanying notes 331, 345. Also, as in the case of an appointment without regard to seniority (see supra text accompanying note 253), it would not appear to be good form for an appointing authority to appoint his own successor.

255. A.F.R. 35-54, ¶ 10c, Sept. 15, 1981.

256. See supra text accompanying notes 207-13.

257. A.F.R. 35-54, ¶ 10c, Sept. 15, 1981. The Air Force could lawfully create a procedure for temporary appointments, however. See Op. JAGAF 1981/44, July 23, 1981.

258. This means, in the interest of regularity, that new orders must be published on return. See A.F.R. 35-54, ¶ 10c, Sept. 15, 1981. Also, a constructive assumption is a possibility on return. See generally supra note 206 and accompanying text.

259. But cf. U.S. v. Miner, 23 M.J. 694 (A.F.C.M.R. 1986. See generally supra notes 231-37 and accompanying text.

260. For the effect of an order to one officer not to assume command after another officer has been appointed, see supra notes 218-19 and accompanying text.

261. A.F.R. 10-7, ¶ 2-3a, Sept. 15, 1986. Note that the format prescribes the words, "by direction of the President."

262. Id. at ¶ 2-3b.

263. One need only leave out the words, "by direction of the President," and use the format for appointments without regard to seniority. Such an order might properly recite who made the appointment, if the appointing authority does not sign the orders.

264. See generally supra note 206 and accompanying text. Sometimes a commander serves as commander only on the strength of an "implied" appointment in his permanent change of station orders (or in his personnel records), in which he is given the duty title, "commander." This is not necessarily good form, and it will not suffice at all in the case of squadron section commanders and detachment commanders. See A.F.R. 26-2, ¶¶ 3-24, 3-11, Jan. 6, 1982; A.F.R. 10-7, ¶ 2-3b, Sept. 15, 1986; A.F.R. 111-9, ¶ 3a(1), Sept. 12, 1984.

265. There is no apparent reason why appointment orders cannot be tailored to account for effective dates different than the dates the orders are published, i.e., retroactive and prospective appointments. However, there is presently no procedure for self-terminating appointments such as temporary appointments (see supra notes 257-59 and accompanying text) or appointments for specified periods. (Thus, for example, an appointing authority would be on uncharted ground if, in the same order, he appointed A for one week and B for the second week; or A for a week, followed by B indefinitely). Also, because of this and because he cannot appoint his own successor (see supra text accompanying notes 253-54), an appointing authority cannot, for

example, appoint one officer for one week and reappoint himself thereafter. There also is no procedure for "standing" appointments, under which a deputy is appointed on a single order to be the commander anytime the regularly assigned commander is absent for periods of prescribed length. Lacking express authorization in a departmental regulation for these and similar schemes to simplify command succession, it would appear too problematical to attempt them. However, each of them has been attempted, with varying degrees of disapproval, disapprobation, condemnation, and outrage from offices of primary responsibility, higher headquarters, military justice authorities, and interested onlookers.

266. See J. Luvaas, The Education of an Army: British Military Thought 1815-1940 153 (1964).

267. See generally supra notes 21-24 and accompanying text.

268. "Dual hatting" in any form has not always been looked at with favor. In his memoirs, General Grant described the case of Confederate General Braxton Bragg:

I have heard . . . an anecdote very characteristic of Bragg. On one occasion, he was [commanding a company] and at the same time acting as post quartermaster and commissary. . . . As commander of the company he made a requisition upon the quartermaster himself for something he wanted. As quartermaster he declined to fill the requisition, and endorsed on the back of it his reasons for so doing. As company commander he responded to this, urging that his requisition called for nothing but what he was entitled to, and that it was the duty of the quartermaster to fill it. As quartermaster he still persisted that he was right. In this connection of affairs Bragg referred the whole matter to the commanding officer of the post. The latter, when he saw the nature of the matter referred, exclaimed: "My God, Mr. Bragg, you have quarrelled with every officer in the army, and now you are quarrelling with yourself!"



U. S. Grant, Personal Memoirs 343 (Da Capo Press ed. 1982). See also Op. JAGAF 1978/62, June 6, 1978: "Giving Air Force officers dual responsibilities of staff and command is not . . . necessarily consistent with the basic principles of command and staff. . . . In our opinion, assigning command functions to Staff officers erodes . . . command and staff distinctions . . . ." (Note that the Judge Advocate General himself is "dual-hatted" as the chief legal staff officer of the Air Force and the Commander of the Air Force Legal Services Center. See A.F.R. 23-29, ¶ 3a, Jan. 21, 1980.) See generally supra note 65.

269. See J. Hittle, supra note 45, at 7-8; M. Van Creveld, supra note 29, at 28, 40. (Van Creveld calls these commanders "specialist commanders.") See also A.F.R. 26-2, ¶ 2-2h, Jan. 6, 1982: "Regardless of the functional area where it is used, a squadron has a substantive mission of its own as opposed to being responsible only for administrative support." For a definition of administration, see the DOD Dictionary: "ADMINISTRATION--1. The management and execution of all military matters not included in strategy and tactics. 2. Internal management of units." J.C.S. Pub. 1 at 5. Cf., H. Scott, supra note 66, at 390: "[O]fficers of the staff corps seldom have troops of their own serving under their command . . . ."

270. For one view of "operations" squadrons, see supra note 64.

271. See generally supra note 60.

272. See supra note 65.

273. The so-called military reformer, William S. Lind, describes such trends as "intrainstitutional" factors: "those influences that reflect not the objective purposes of and obstacles

facing the service—such as mission and threat—but rather the parochial interests and outlooks of groups or individuals within the organization." Lind, "Military Doctrine, Force Structure, and the Defense Decision-Making Process," Air U. Rev., May-June 1979, at 21, 26.

274. The current promotion opportunity is 55 per cent of first-time primary zone eligibles in each year group, with total selections up to this number shared by officers in, below, and above the promotion zone. Command below group level brings with it the well known "A" prefix to an officer's Air Force Specialty Code, which is noted on all officer effectiveness reports and elsewhere, and thus is spread out in the officers promotion selection record which is reviewed by promotion selection boards. For a pre-Vietnam piece on the importance of command experience and the scarcity of command positions in the Air Force, see Cannon, supra note 46.

275. See supra note 50.

276. There are numerous historical examples of staffs that have attempted to uplift their own stature. See, e.g., Craig, "Command and Staff Problems in the Austrian Army 1740-1866," in M. Howard, The Theory and Practice of War 45 (1966). However, a somewhat exhaustive and completely exhausting review of writings by or about: (a) the great military historians of the past; (b) the great contemporary military historians; (c) the great military legal commentators; (d) the great captains; (e) the great tacticians; and (f) the great leaders of the German Great General Staff, failed to reveal one example outside of the U. S. Air Force of an administrative staff that has sought to do this by turning themselves into a command! In the category of the "great military historians of the past," the review included Sun Tzu,

Thucydides, Xenophon, Clausewitz, Jomini, Douhet, J. F. C. Fuller, Mahan, Liddell Hart, and S. L. A. Marshall. In the category of great contemporary military historians, the review included Michael Howard of Oxford University, Peter Paret of Stanford University, Jay Luvaas of the U. S. Army War College, and John Keegan of the Royal Military Academy, Sandhurst. In the category of great military legal commentators, the review included Colonel William Winthrop of the nineteenth century, and Colonel Frederick Bernays Wiener of the twentieth. In the category of great captains, the review included Alexander the Great, Hannibal, Julius Caesar, Genghis Kahn, Gustavus Adolphus, Peter the Great, Frederick the Great, Napoleon I, Ulysses S. Grant, and Douglas MacArthur. In the category of great tacticians, the review included William Tecumseh Sherman, Robert E. Lee, "Stonewall" Jackson, Heinz Guderian, George S. Patton, and Raymond A. Spruance. In the category of great leaders of the German Great General Staff, the review included Scharnhorst, Gneisenau, Moltke the Elder, and Schlieffen.

277. This was the 1983 Worldwide Manpower and Personnel Conference at the Air Force Manpower and Personnel Center (now the Air Force Military Personnel Center), Randolph AFB, Texas. Several conferees agreed that command experience was becoming almost a requirement for promotion to colonel. However, they also pointed out that command of squadrons was excellent preparation for command of bases, and that a commander's job satisfaction and access to power were unparalleled by any other position category in the Air Force.

278. Conditions imposed were that the comptroller staff have at least 40 military personnel authorizations, and that no additional

authorizations would be given for squadron commander, first sergeant, and similar "orderly room" personnel. A long-standing objection of the comptroller was that his enlisted subordinates were usually attached to the base commander's squadron section for disciplinary action, yet the base commander is not in the comptroller's chain of supervision. The comptroller squadron changes that by alleviating the need for administrative control by a squadron section commander.

279. The new squadron is the 94th Airmanship Training Squadron at the United States Air Force Academy, which provides free-fall sky diving and soaring (glider) training opportunities to academy cadets.

280. These involve space operations crews, such as missile warning crews, space surveillance crews, air defense operations crews, and satellite operations crews in the Air Force Space Command, or its superior affiliates (the United States Space Command and the North American Aerospace Defense Command).

281. This involved the supervision structures within the Air Command and Staff College (ACSC) and the Squadron Officer School (SOS) at Air University. Before the change, the student seminars or "sections" formed structures known as "wings" within each school. These were not wings in the sense of operational wing organizations, but rather just mechanisms for one officer, a wing chief, to provide overall supervision over several seminars. In 1986, the "wings were converted into real squadrons, although military justice authority under the Uniform Code, such as the authority to administer nonjudicial punishment, was withheld from the new squadron commanders. An interesting feature of these changes is that ACSC and SOS are units--named units--not establishments, according to Air University

organizational documents, and a unit (as opposed to an establishment) cannot have a subordinate unit. See supra text accompanying notes 109-113. According to manpower and organization representatives, appropriate officials waived that constraint under the applicable regulation. See generally A.F.R. 26-2, ¶ 1-16, Jan. 6, 1982.

282. The functions are said to be similar or "like" functions. See "Test of Mission Support Squadron Widens," A.F. Times, Dec. 1, 1986, at 15, col. 1. But see infra note 286 (AFM 20-3). There are other variations. One is the inclusion of the combat support group's or air base group's (or wing's) squadron section. (More correctly, this amounts to the creation of a squadron section in the mission support squadron, and the termination of the squadron section in the group or wing.) This has generated jurisdictional problems when the mission support squadron section commander sought to impose nonjudicial punishment against an enlisted member of a staff that was left in the group but not included in the new squadron. Headquarters, Air Training Command has taken the position that a squadron section commander of a mission support squadron (test) can "reach out" to such an enlisted member for purposes of disciplinary action, if the enlisted members of the nonincluded staffs are attached to the squadron section for such purposes by the publication of an administrative order.

283. Of 19 bases participating in the test, 14 commanders formerly were directors of personnel, 1 commander had a combined background including personnel, 3 formerly were directors of administration, and 1 formerly was a chief of social actions. See "Test of Mission Support Squadron Widens," supra note 282.

284. Other announced organizational objectives include, among

others, improving morale among administrative workers by providing a separate squadron identity, and emphasizing leadership over management, which is consistent with the current Air Force position—widely taught—that a commander is a leader of people first and a manager of resources second. (Apparently, the proposition that the new squadron emphasizes leadership over management is therefore based on the premise that a mere supervisor emphasizes management over leadership, or at most gives them equal weight.) One negative experience in the test has been the request for more manning authorizations to handle orderly room functions. For example, Reese AFB, a test participant, asked for a permanently assigned "on-the-job" trainer, to be acquired by adding a new authorization rather than by converting or transferring an existing authorization.

285. If, for example, the base commander formerly supervised the director of personnel, director of administration, chief of MWR, and the squadron section commander; and the director of personnel formerly supervised the chief of military personnel, chief of civilian personnel, and the education officer; the base commander under the test now supervises three fewer people; and the former director of personnel—now squadron commander—supervises seven, rather than three (accounting for the chief of social actions, formerly assigned to the vice wing commander at many installations).

286. The criteria for such conversions and changes are not clear in departmental regulations. See, e.g., A.F.R. 26-2, "Organization Policy and Guidance," Jan. 6, 1982; A.F.R. 26-6, "Manpower and Organization Management Objectives and Responsibilities," Nov. 16, 1983; A.F.M. 20-3, "USAF Function Classification and

Organization Nomenclature," Oct. 22, 1969. The first of these regulations expresses the principles of Air Force organization (at ¶¶ 1-1 - 1-5), the objectives of Air Force organization (at ¶¶ 1-6, 1-7), and some broad criteria for change (at ¶ 1-17). (The latter, include, among others, essentiality, increased mission effectiveness, low implementation cost, and absence of adverse implications in areas such contracting, manning, personnel, budget, and plant and equipment). The second regulation states the management objectives of Air Force activities (at ¶ 2), and (at ¶ 3c(1)) charges commanders and supervisors to "[e]nsure that their internal organization structure [is] the most economical to improve combat readiness, enhance wartime effectiveness, and complete prescribed workloads under peacetime operating conditions." The third, a manual, shows that the Air Force does not consider the personnel, administration, and MWR functions to be similar or "like" functions because each is given a different function code (at ¶ 5). But see supra note 282.

287. Between July 1, 1986 and March 13, 1987, the author conducted interviews with three field grade officers from each of the following eight organizations: Air Force Military Personnel Center; Headquarters, Air University; Air Command and Staff College; Squadron Officer School; Headquarters, Air Force Space Command; Air Force Accounting and Finance Center; United States Air Force Academy; and Air Force Engineering and Services Center. This amounted to 24 interviews, each with a different field grade officer, and each with an officer whom the author had not previously known. Each interview was conducted under a promise of "nonattribution" by name, subject expressly to any law to the contrary that would compel involuntary attribu-

tion. In each interview, the author asked the officer to describe his or her understanding of the primary motivation for forming the new squadrons or changing the names of the supervision structures. Respondents were asked to separate the primary motivation from the primary justification or reason, if they felt them to be different. The author asked only for the motivation. Each interview was limited to the changes that applied to a respondent's own organization. For example, the officers at the Air Force Accounting and Finance Center were asked about comptroller squadrons only. There were no leading questions that might suggest an answer. The results: in every interview, the officers responded with words to the effect that the change was motivated primarily by the need to improve the promotion prospects of the new commanders. These results are consistent with representations made to the author in 1984 at the Air Force Manpower and Personnel Center (now the Air Force Military Personnel Center) by some of the actual proponents ("inventors") of the mission support squadron concept.

288. See generally supra notes 21-24 and accompanying text. Conversely, the new commanders also acquire a new legal duty—the duty to refrain from cruelty and maltreatment of the people who are, by virtue of the new commands, subject to the commanders' orders. See U.C.M.J., art. 93.

289. In almost all of the interviews conducted by the author (see supra note 287), the respondents also stated that the new commanders should be commanders because they were doing the job of a commander anyway, but by another name. (One is reminded of Clausewitz's famous dictum that war is a continuation of politics, but by other means.) They were quick to offer that this was the primary



justification for the changes. Query whether some respondents may have confused commanders with chief supervisors, or even with lesser supervisors such as foremen.

290. Query whether the following applies: "[T]he internal structure of [military] organizations can, and must, be modified so that intrainstitutional factors do not work at cross purposes to the organization's objective reason for being." Lind, supra note 273, at 27.

291. Since World War II, command personnel in a typical western army, as a percentage of total personnel, has risen fivefold. M. Van Creveld, supra note 29, at 267. In the U. S. Air Force, one possible contributing factor has been the proclivity of organization staffers on the Air Staff to allow the decisions in this area to be made, effectively, at major command level.

292. Several years ago, Professor Holley asked:

Given the critical importance of staff work in the present-day military organization, why have there been so few serious studies dealing with one facet or another of this vital function? . . . The need to develop doctrine for the effective functioning of a staff is no less acute than the need to perfect tactical doctrine; but this kind of activity is now sadly—one might say scandalously—neglected.

Holley, "On History and Staff Work," Air U. Rev., Jan.-Feb. 1970, at 101, 108. See generally supra note 6.

293. See supra text accompanying note 103.

294. See supra text accompanying note 111.

295. See supra text accompanying notes 107-08.

296. See supra text accompanying notes 105, 114.

297. See generally supra note 23. However, a nonorganization-

al commander may ordinarily take the kinds of adverse administrative actions that a supervisor can take, for example, reprimanding. Also, at least for nonorganizational commanders of unit segments such as "alpha" flights and named activities, he may take whatever other adverse administrative actions that are delegable, and delegated, to him by the organizational commander.

298. A commander must ordinarily be a unit commander to impose nonjudicial punishment in the Air Force. A.F.R. 111-9, ¶ 3a(1), Sept. 12, 1984. The same regulation authorizes other commanders to impose nonjudicial punishment as follows: "the commander of the following units, if he or she is properly appointed on special orders: headquarters squadron sections, other squadron and detachment sections, and detachments." Id. (Emphasis added.) The word, "units," is misused here, for the described activities are unit segments, not units. See infra notes 324, 339 and accompanying text. Query what is a "detachment section." See also A.F.R. 36-1, atch. 1, item 1, Jan. 1. 1984: "Persons serving in . . . A prefix positions must be delegated authority in writing to administer actions under Article 15, UCMJ." "A" prefix positions are commanders below group level. Id. See also supra note 274. Nonorganizational commanders, with the exception of aircraft commanders and "alpha" flight commanders alone, can get the "A" prefix just like organizational commanders do. Query the effect of the above statement in AFR 36-1 on the nonjudicial punishment authority of an organizational commander. Since when does a security police squadron commander, for example, have to be "delegated authority in writing to administer actions under Article 15, UCMJ"? This is an inconsistency between AFR 36-1 and AFR 111-9 that needs to be resolved.

In the Air Force, subject to exceptions for commanders who are general officers (and some other minor exceptions), organizational commanders receive one of four Air Force Specialty Codes: (a) 0066, "Air Commander" (commands tactical groups and wings); (b) 0036, "Missile Commander" (commands missile organizations above squadron level); (c) 0026, "Organization Commander" (commands nontactical organizations such as combat support groups); and (d) other codes with the "A" prefix (commands organizations below group level). (Note that giving the "A" prefix to a nonorganizational commander is not therefore consistent with the latter.) This means that most organizational commanders—squadron commanders—are coded, not with a separate number, but with the "A" prefix. Because most squadron commanders are not delegated Article 15 authority, but use the authority inherent by law and AFR 111-9 in their positions, the statement in AFR 36-1 could pose a threat to the validity of their nonjudicial punishment actions. In other words, an allegation could be made that the Air Force does not comply with its own regulations in this area.

299. See generally supra note 23.

300. See supra text accompanying note 124.

301. Squadron section commanders and detachment commanders are special cases. See infra text accompanying notes 327, 340-41.

302. See supra text accompanying note 126.

303. See generally supra note 21. A commander can have power here that a noncommander does not have. Of course, the orders must relate to a matter within the legitimate purview of the activity or function commanded.

304. See generally supra note 22. For an additional duty owed

by a nonorganizational commander, or by any commander, see supra note 288. Nonorganizational commanders too, with the exceptions of aircraft commanders and "alpha" flight commanders, can get the "A" prefix. See generally supra note 274.

305. J.C.S. Pub. 1 at 12.

306. A.F.M. 11-1, vol. 1 at 8, Jan. 2, 1976. In the Air Force this term is used by some interchangeably with the term, "first pilot." However, these terms are not necessarily interchangeable. A "first pilot" is a "[p]ilot with a rating which qualifies him to fly a specified aircraft and who is the responsible crew member for flying that aircraft." Id. at 17. See also A.F.R. 60-1, ¶ 3-3a May 28, 1985: "The pilot who actively controls an aircraft. . . . Logging [first pilot] time is not based on which set of controls is being used . . . or on the pilot's duty position shown on the flight authorization." One of the duty positions on the flight authorization is aircraft commander. See id. at ¶ 1-8a(1).

307. A.F.R. 60-1, ¶ 1-8a(1), May 28, 1985. There are two important features here. First, because the aircraft commander must be a pilot, this amounts to an eligibility rule. Second, it is widely, if not universally, understood that the aircraft commander represents the one case of command where the commander need not be senior in grade. Thus, "rank" in this regulation is used both in the sense of rank within a grade and in the sense of rank among the grades. (This does not mean that an aircraft commander who is junior to a member of his aircrew may be the reporting official for that member on an officer effectiveness report. That formerly was possible in the Air Force, but not now. The rule now is that the rater must be equal or higher in

grade to the ratee. See A.F.R. 36-10, ¶ 2-22a, Oct. 25, 1982. Thus, the rule is less restrictive for command than it is for evaluation.)

308. See, e.g., Military Airlift Command Regulation 55-56, ¶ 2-5, Apr. 1, 1982; Military Airlift Command Supplement to A.F.R. 60-1, ¶ 1-8a(1), June 27, 1986. It is most interesting to note a statute that applies only to the U.S. Navy:

If the crew of any naval . . . aircraft are separated from their . . . aircraft because of its wreck, loss, or destruction, all the command and authority given to the officers of the . . . aircraft remain in full force until the crew are discharged or reassigned.

10 U.S.C. § 5951 (1982). There is no comparable statute for the Air Force. Arguably, the Secretary of the Air Force could lawfully prescribe an identical rule for the Air Force under his general authority to "prescribe regulations to carry out his functions, powers, and duties" [see 10 U.S.C. § 8013 (g) (3) (Supp. IV 1986)], but this has not been done. Perhaps it should be done in AFR 35-54. Meanwhile, in the absence of rules prescribed by a flying command, the Air Force operates on an unwritten custom that essentially is identical to the Navy statute.

309. See supra text accompanying notes 174-76.

310. See supra note 174.

311. See supra note 175.

312. See supra note 176.

313. This took place in a camp housing United States prisoners and a few others in North Vietnam. See Flynn, supra note 137, at 12: "We called ourselves the 4th Allied POW Wing because this was the fourth war in which we have had allied prisoners and, of course, the

allies being the three Thais and one South Vietnamese."

314. See, e.g., J. & S Stockdale, supra note 137, at 400. See also R. Risner, The Passing of the Night 203-209 (1973); J. Denton, When Hell Was in Session 28, 158, 164-65 (1982); J. Dramesi, Code of Honor, supra note 137, at 192-93; J. Rowe, Five Years to Freedom 196 (1974); J. Jensen, Six Years in Hell 149 (1974). See generally Manes, "Barbed Wire Command: The Legal Nature of the Command Responsibilities of the Senior Prisoner in a Prisoner of War Camp," 10 Mil. L. Rev. 1 (1960).

315. The effective inclusion of a prisoner of war commander (regardless of his service) in the definition of "superior commissioned officer" for many purposes under the Uniform Code is one example. See generally supra notes 21-22 (disrespect, willful disobedience, failure to obey, and assault offenses). For accounts of serious U. S. prisoner of war misconduct in the Vietnam war—abuse of the senior officer by his own men (and aiding the enemy) that, in any previous war would probably have resulted in the application of the label, "traitor," and the most severe of punishments, see Z. Grant, Survivors 1975); G. Smith, P.O.W: Two Years With the Vietcong (1971). Zalin Grant, a journalist, has told the story of the infamous "peace committee" and their commander, the hero, Colonel Ted Guy. George E. Smith has told his own story. Books such as these helped the post-war effort to expand the reach of the Uniform Code. See also "Report of the Defense Review Committee for the Code of Conduct" (1976); Barnes, "A New Look at the Code of Conduct" (April 1974) (unpublished thesis presented to The Judge Advocate General's School, U. S. Army, available in Air University Library).

316. See A.F.R. 28-4, atch. 1-2-11, Nov. 16, 1978.

317. The Judge Advocate General has criticized the position of air troop commander in terms that could equally apply to most, if not all forms of nonorganizational command. See Op. JAGAF 1986/2, Jan. 8, 1986:

[The air troop commander] has no command authority. . . . That so-called commander has no command whatsoever. And this is precisely what is the problem with the designation. It should be changed. There is no point in calling an individual a commander, of whatever variety, if he is not in fact a commander. There is more than enough confusion as it is over where command lies or devolves, without our consciously making it more difficult by designating one a commander who [is not]."  
[Emphasis in original.]

318. A.F.R. 355-1, ¶ 2-18c, Nov. 17, 1986.

319. A.F.R. 125-3, ¶ 10-14, Apr. 1, 1979.

320. See A.F.R. 36-1, atch. 8. Jan. 1, 1984, at 65.

321. Some of these crews are more closely affiliated with the United States Space Command and the North American Aerospace Defense Command.

322. See generally supra text accompanying note 123.

323. See A.F.R. 36-1, atch. 4, Jan. 1, 1984, at 13. For an interesting case of nonorganizational "noncommand" in an educational environment at the United States Air Force Academy, see infra text accompanying notes 365-67.

324. A.F.R. 26-2, ¶ 3-13, Jan. 6, 1982.

325. See generally C. Ravenstein, supra note 103, at 56-57.

326. They can be given names consistent with the function of the squadron they serve, for example, medical squadron section, patient

squadron section, etc. A.F.R. 26-2, ¶ 3-13, Jan. 6, 1982.

327. See generally id. at ¶ 3-24; C. Ravenstein, supra note 103, at 56-57.

328. There is no apparent reason for this other than that is departmental policy. See A.F.R. 26-2, ¶ 3-24, Jan. 6, 1982; A.F.R. 10-7, ¶ 2-3b, Sept. 15, 1986; A.F.R. 111-9, ¶ 3a(1), Sept. 12, 1984.

329. See supra note 215 and accompanying text.

330. But see Op. JAGAF 1986/5, Jan. 23, 1986. This opinion seems to be premised on the proposition that squadron sections, effectively, are units, but it is not clear whether the opinion's analysis contemplated the departmental pronouncements to the contrary. See, e.g., A.F.R. 26-2, ¶ 3-13, Jan. 6, 1982.

331. Of course, not every unit qualifies for a squadron section. See A.F.R. 26-2, ¶ 3-24b, Jan. 6, 1982.

332. Id. at ¶ 3-24d. At some bases, the enlisted members of some outside units even are attached to a squadron section by the publication of administrative orders. For example, a member of a wing headquarters unit may be attached to a group headquarters unit's squadron section. This, apparently, is based on the "sending" commander's inherent authority to attach his members wherever he wishes for administrative control. For the definition of administrative control, see supra note 131. For an excellent article on the leadership aspects of being a squadron section commander over enlisted members, see Ray, "The Headquarters Squadron: The Junior Officer as Leader," Air U. Rev., July-Aug. 1975, at 72. (However, the author of that piece, a former squadron section commander himself, did not know that he did not command an organization!)



333. This seems to be stated in the regulation. See A.F.R. 26-2, ¶ 3-24d, Jan. 6, 1982. In any case, this was implicit in a 1983 letter of the office of primary responsibility over AFR 26-2, the Air Staff's Organization Division of the Directorate of Manpower and Organization. See HQ USAF/MPMO Letter to HQ AFMPC/JA, "Authority of Squadron Section Commanders Over Officers," Feb. 25, 1983. (That directorate was part of what was then the manpower and personnel staff, but now belongs to the programs and resources staff. Accordingly, HQ USAF/MPMO is now HQ USAF/PRMO.)

334. Otherwise, this would result in a junior's commanding a senior. If they are equal in grade, an appointment without regard to seniority will be required. See generally supra text accompanying notes 238-41. If they are not equal in grade, i.e., the commander is in a lower grade, the attachment will be impossible, except when the senior is ineligible to command. See generally supra text accompanying notes 145-60.

335. At the Air Force Military Personnel Center, for example, only first and second lieutenants are attached to a squadron section commanded by a lieutenant colonel or major.

336. Based on an informal survey of the major commands conducted by the author in 1985, it is clear that, in the Air Force as a whole, officers are rarely attached to squadron sections. (The survey also disclosed that some major commands had organizations that thought they had attached their officers—or thought that officers were automatically attached—but could not produce any evidence of an attachment. In those organizations, the squadron section commander's disciplinary actions over officers were, in a word, extrajudicial.)

The following is a format for orders of attachment used in Air Training Command (no formats appear in AFR 10-7):

All commissioned officers of the Department of the Air Force in the grade of \_\_\_\_\_ and below who are now or hereafter assigned to (Headquarters) \_\_\_\_\_ [parent unit] \_\_\_\_\_, except those commissioned officers of \_\_\_\_\_ [list those subordinate units, if any, having an actual commander of their own under the parent commander] \_\_\_\_\_, are attached for the duration of such assignment to the (Headquarters) Squadron Section, \_\_\_\_\_ [parent unit] \_\_\_\_\_, and are under the immediate command jurisdiction of the Commander, (Headquarters) Squadron Section, \_\_\_\_\_ [parent unit] \_\_\_\_\_, for all adverse administrative actions and adverse personnel actions, but excepting actions under Article 15, Uniform Code of Military Justice, and the convening of courts-martial. Authority: AFR 26-2.

337. For a suggestion of the distinction between administrative support and administrative control, see supra note 131.

338. For example, he can never take "disciplinary action under UCMJ," which presumably includes—and thus excludes—nonjudicial punishment under Article 15 of the Uniform Code. See A.F.R. 26-2, ¶ 3-24d, Jan. 6, 1982. There are also limitations in some of the regulations that deal with adverse administrative personnel actions. For example, squadron section commanders are currently prohibited from making placements on an unfavorable information file or a control roster respecting commissioned officers, although even staff heads at major command or separate operating agency level are permitted to perform these actions. See A.F.R. 35-32, ¶¶ 4, 16, Feb. 12, 1982.

339. A.F.R. 26-2, ¶¶ 3-2a, 3-11, Jan. 6, 1982. See also C. Ravenstein, supra note 103, at 57-58.

340. A.F.R. 26-2, ¶ 3-11, Jan. 6, 1982.

341. Cf. id. at ¶ 3-21a. According to one observer, detachments always have more than two people attached. See C. Ravenstein, supra note 103, at 58.

342. A.F.R. 26-2, ¶¶ 3-11, 3-21a(1), Jan. 6, 1982.

343. Id. at ¶ 3-11. See also A.F.R. 10-7, ¶ 2-3b, Sept. 15, 1986; A.F.R. 111-9, ¶ 3a(1), Sept. 12, 1984.

344. See supra text accompanying note 340.

345. See supra text accompanying note 341.

346. A.F.R. 26-2, ¶ 2-2j(1), Jan. 6, 1982.

347. Id. at ¶ 2-2j(2). See also C. Ravenstein, supra note 103, at 56. "Named" flights have the same stature as "alpha" flights.

348. A.F.R. 26-2, ¶ 3-20b, Jan. 6, 1982.

349. The security police squadrons do not ordinarily use the title, flight commander. They prefer the nonorganizational activity designation of "shift commander." See generally supra text accompanying note 319.

350. A.F.R. 26-2, ¶ 3-2a, Jan. 6, 1982. See also C. Ravenstein, supra note 103, at 54-56.

351. See supra note 121 and accompanying text.

352. For example, the Air Force Museum at Wright-Patterson AFB, Ohio, was a named activity of the headquarters unit of Wright-Patterson's air base wing until 1975. In that year, it became a unit unto itself, under the establishment, Air Force Logistics Command. See C. Ravenstein, supra note 103, at 55. See also A.F.R. 210-4, ¶ 5a, Nov. 4, 1983. Short of reading or hearing the media release about this, there is no way that the public at large would know about it.

353. See A.F.R. 26-2, ¶ 3-10, Jan. 6, 1982.

354. See supra note 121. The commandant of the school thus is a nonorganizational commander.

355. A.F.R. 26-2, ¶ 3-12, Jan. 6, 1982.

356. Id. at ¶¶ 3-2a, 3-22a(1). See also C. Ravenstein, supra note 103, at 58.

357. See generally A.F.R. 23-29, Jan. 21, 1980; A.F.R. 111-1, ¶ 13-5a, Aug. 1, 1984.

358. The term, "pseudo" unit, belongs to Mr. Ravenstein. See C. Ravenstein, supra note 103, at 58-59.

359. A.F.R. 26-2, ¶¶ 3-14, 3-2a, Jan. 6, 1982. See also C. Ravenstein, supra note 103, at 58-59.

360. See, e.g., A.F.R. 111-9, ¶ 3a(1), Sept. 12, 1984. (The senior officer has the authority to impose nonjudicial punishment under Article 15 of the Uniform Code against members of the element.)

361. Query whether what Confucius had to say is relevant to this. See supra note 55.

362. See generally C. Ravenstein, supra note 103, at 54.

363. This large staff is sometimes referred to as CLATORLIT. On the Air Force Legal Services Center, see A.F.R. 23-29, Jan. 21, 1980.

364. See, e.g., A.F.R. 35-32, ¶¶ 4d, 16b, Feb. 12, 1982. (At major command and separate operating agency level, and at the Air Staff, vice commanders, deputy commanders, chiefs of staff, deputy chiefs of staff, and their equivalents have the authority to make placements on unfavorable information files and control rosters respecting members under their "control.") See also A.F.R. 36-2, ¶ 4-3, Oct. 1, 1984. (A major commander may delegate his role in

officer involuntary discharge processing to a vice commander, assistant vice commander, deputy commander, or chief of staff.) See also A.F.R. 36-89, ¶ 1-3v, Sept. 15, 1981. (Whatever a major commander or a separate operating agency commander can do in the area of officer promotion propriety processing, so can his vice commander, assistant vice commander, and chief of staff, and so can the deputy chiefs of staff at the Air Staff.) See also Department of the Air Force Special Order GA-134, Sept. 25, 1985:

3. All commissioned officers, warrant officers, and enlisted personnel of the Department of the Air Force who are now or hereafter assigned to Headquarters USAF, Office of the Secretary of the Air Force, Office of the Joint Chiefs of Staff, Headquarters Air Force Legal Services Center, Department of Defense, and Office of the Secretary of Defense, are attached for the duration of such assignment to the Air Force District of Washington and subordinate units for general, special, and summary court-martial jurisdiction, actions under Article 15, Uniform Code of Military Justice, and administrative elimination actions. The Chief of Staff, Air Staff Deputy Chiefs of Staff, Assistant Chiefs of Staff, other heads of staff agencies, directors, and comparable officers within the Office of the Secretary of the Air Force, Office of the Joint Chiefs of Staff, and Office of the Secretary of Defense are authorized to act as Unit Commanders for all such officers and enlisted personnel assigned within their respective activities for all actions except those stated above. (Emphasis added.)

This order was promulgated in the name of the Secretary of the Air Force. The Secretary has statutory power to do things like this. See 10 U.S.C. § 8013 (g) (3) (Supp. IV 1986). It is doubtful that a mere commander could vest command-like powers (as in the order) in members of his staff, lacking a statute of his own or express authorization from the Secretary.

365. 10 U.S.C. § 9334 (b) (1982).

366. Telephone interview with Colonel Marcos E. Kinevan,  
Permanent Professor of Law, United States Air Force Academy (Mar. 12,  
1987).

367. Id.

368. See generally supra note 152.

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